

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM.) R19-1
) (Rulemaking - Air)
CODE 204, PREVENTION OF)
SIGNIFICANT DETERIORATION,)
AMENDMENTS TO 35 ILL. ADM.)
CODE PARTS 101, 105, 203,)
211, and 215.)

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Tetyana Rabczak, 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 27th day of November, 2018, commencing at the hour of 9:07 a.m.

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A P P E A R A N C E S

MS. TETYANA RABCZAK, Chairman
MS. CARRIE ZALEWSKI, Board Member
MS. BRENDA CARTER, Board Member
MR. MARTINE KLEIN, Board Member
MS. KATIE PAPADIMITRIU, Board Member
MS. ALISA LIU, Technical Unit

ALSO PRESENT:

MS. SALLY CARTER
MR. JASON SCHNEPP
MR. CHRISTOPHER ROMAINE
MR. ALEC DAVIS
MS. DANA VETTERHOFFER
MS. LADONNA DRIVER
MR. JEFF SPRAGUE
MS. KATHRYN PAMENTER
MR. DARYL GRABLE

1 HEARING OFFICER RABCZAK: It is
2 9:07. Let's begin. Good morning, everyone, and
3 welcome to the Illinois Pollution Control Board.
4 This is a hearing in the rulemaking proceeding
5 R19-1. On Illinois Environmental Protection
6 Agency's proposal, I will refer to the Agency as
7 "Agency" or "IEPA" just for the record.

8 The proposal is to add new Part
9 204 Prevention of Significant Deterioration to the
10 Board's Rules and to amend parts 101, 105, 203,
11 211 and 215. My name is Tetyana Rabczak and I
12 will be the Hearing Officer for this proceeding.
13 Also present today from the Board are the lead
14 Board member on this proceeding Chairman Katie
15 Papadimitriu, she is in Springfield, member Carrie
16 Zalewski. She will be joining us in a few
17 minutes. She is late because of the traffic. We
18 also have Brenda Carter, a Board member present in
19 Springfield. Also from the Board we have Martine
20 Klein who is the attorney advisor to Member
21 Zalewski. And we have Alisa Liu who is the
22 Board's technical specialist from the Board's
23 Technical Unit.

24 This hearing is governed by the

1 Board's procedural rules. All information that is
2 relevant and not repetitive or privileged will be
3 admitted into the record. Please be -- bear in
4 mind that any question posed today by the Board
5 and staff are intended solely to help develop a
6 clear and complete record for the Board's decision
7 and not to reflect any prejudgment or any
8 testimony -- on any testimony, comment or other
9 questions.

10 So before we begin with the
11 substantive part, the house -- a few housekeeping
12 matters. We will break at 10:30 for ten minutes,
13 then we continue until 12:30 for lunch. After the
14 lunch -- we can do a one-hour lunch based on how
15 long it takes in the cafeteria downstairs. After
16 we resume, depending on the progress, we can
17 either break at 3:00 p.m. and then go past 4:30 or
18 we can continue until 4:30 and conclude the
19 meeting as scheduled.

20 If we break at 3:00, we can go
21 for another ten-minute break at 3:00 and if we
22 have any members of the public wishing to comment,
23 and we have a comment signup sheet here in Chicago
24 and we also have one in Springfield, if we have

1 time, we will allow the members of the public to
2 comment at the very end of the hearing about three
3 minutes each. Again, as I said, if we see that we
4 can conclude today, we can go past 4:30 so that we
5 don't have to reconvene tomorrow.

6 Would that work for everybody?
7 Any objections to that schedule?

8 MS. CARTER: We're fine.

9 HEARING OFFICER RABCZAK: Thank you.
10 As I said, comments signup sheet is at the
11 beginning -- at the front of the room and there is
12 another signup sheet in Springfield. I will keep
13 an eye on that if anybody shows up to see if we
14 have any comments from the public or persons
15 willing to come in.

16 When you speak, I would ask you
17 to state your name and spell your name for the
18 court reporter for the clarity of the record and
19 also state who you represent. A little bit about
20 this rulemaking. On July 2nd, 2018, the IEPA
21 filed a proposal in this rulemaking to amend the
22 Board's air pollution regulations. The proposal
23 seeks to establish a state prevention of
24 significant deterioration, or PSD as we will refer

1 to it today, permitting program in Illinois and
2 the procedures for that program.

3 On August 23rd, 2018, the Board
4 accepted IEPA's proposal for public comment
5 without sending it to first notice. Today, we
6 begin with the first hearing and are scheduled to
7 continue until tomorrow, if necessary. The second
8 hearing is scheduled to begin on January 15th.
9 The Board published notices of the hearing in
10 October in various newspapers. The Board and the
11 Hearing Officer invited interested persons to
12 pre-file their comments and testimony and also to
13 pre-file questions to the testimony, as well as to
14 contact the Hearing Officer to be added to this
15 docket's notice list.

16 Anyone interested to see who is
17 on the notice list can check the Board's website
18 and if you have any suggestions on who else has to
19 be added to the notice list, please let us know.
20 If you wish to receive -- so the notice list the
21 difference between service list and the notice
22 list people on the notice list receive all the
23 Board's orders. So it will be Board orders and
24 Hearing Officer orders. If you wish to receive

1 all the filings, including the parties' filings,
2 you need to be added to the service list. In this
3 case, you just need to file an appearance.
4 Otherwise, every document in this docket is
5 available online on the Board's website.

6 I want to remind you that
7 because this is a video conference and in the
8 Board's rules any document to be offered as a
9 hearing exhibit in this hearing should be filed 24
10 hours before the hearing. We have not received
11 any documents other than the ones that we'll be
12 admitting today in the record, which is pre-filed
13 testimony and pre-filed questions. If the
14 document wasn't pre-filed, it can always be filed
15 after the hearing.

16 So today's hearing will be
17 dedicated to testimony of public comments and
18 any -- any member of the public who wish to
19 provide comments on the proposal. The hearing
20 will also fulfill statutory obligations under
21 Section 27(b) of the Illinois Environmental
22 Protection Act, which requires the Department of
23 Commerce and Economic Opportunity, or DCEO, to
24 conduct a study of an economic impact of the

1 proposed rules.

2 The Board sent the request to
3 the DCEO on September 11th, 2018. The Board did
4 not receive any response from DCEO. At this
5 hearing, any member of the public can provide
6 testimony or comment on DCEO's Economic Impact
7 Study or its decision not to perform it. We have
8 been just joined by member Carrie Zalewski. So
9 she is with us.

10 MS. ZALEWSKI: My apologies for
11 being late.

12 HEARING OFFICER RABCZAK: Does
13 anybody have any questions about the procedure or
14 the purpose of this hearing? In Springfield? No.
15 If not, let's proceed to admitting the pre-filed
16 questions and testimony. So, first, we will give
17 the floor to IEPA and anyone else who wishes to
18 provide an opening statement, if any. We will
19 then introduce and swear in the witnesses and
20 admit the pre-filed testimony and questions. We
21 will then allow witnesses to present their
22 testimony if they wish to do so.

23 Then we will -- again, in the
24 way it was submitted, we will start with

1 Mr. Schnepf just because it comes first and
2 because they are numbered separately, I would
3 admit them as separate exhibits for the clarity of
4 the citation.

5 MS. CARTER: Okay.

6 HEARING OFFICER RABCZAK: We will
7 hear both testimonies first and then open the
8 floor to questions in the order they were
9 received. Because CARE filed first, we will start
10 with CARE -- with the questions filed by CARE and
11 then will give the floor to IERG and the Board's
12 questions will go last.

13 Again, for the clarity of the
14 record, please announce your name and spell it to
15 the court reporter. Please also state who you
16 represent. Are there any questions about this
17 order of hearing? If so -- if not, let's proceed.

18 Would IEPA's attorney like to
19 introduce themselves and make an opening
20 statement?

21 MS. CARTER: Yes. Okay. My name is
22 Sally Carter, C-A-R-T-E-R, I'm assistant counsel
23 on behalf of the Illinois Environmental Protection
24 Agency and with me today at the Board's Chicago

1 hearing room is Chris Romaine, R-O-M-A-I-N-E. He
2 is the Manager of the Construction Unit in the
3 Bureau of Air Permit Section. I also have with me
4 Jason Schnepf, S-C-H-N-E-P-P, lead worker in the
5 Construction Unit for the Bureau of Air Permit
6 Section.

7 The Illinois EPA will be calling
8 Mr. Romaine and Mr. Schnepf as witnesses at
9 today's hearing. In addition to these gentlemen,
10 Jeff Sprague, S-P-R-A-G-U-E, Manager of the
11 Modeling Unit in the Bureau of Air Air Quality
12 Planning Section is located in the Board's
13 Springfield hearing room. Mr. Sprague is
14 available to testify regarding the air quality
15 component of this proposed rulemaking.
16 Mr. Sprague is accompanied in Springfield by
17 Bureau of Air Deputy Counsel Ms. Dana
18 Vetterhoffer, V-E-T-T-E-R-H-O-F-F-E-R.

19 This rulemaking is intended to
20 meet certain obligations of the State of Illinois
21 under the Illinois Environmental Protection Act
22 requiring the Board to adopt regulations
23 establishing a prevention of significant
24 deterioration, or PSD, permit program meeting the

1 requirements of Section 165 of the Clean Air Act.

2 This rulemaking consists of
3 proposed new 35 Ill. Adm. Code Part 204 and would
4 create a state PSD permitting program.

5 Illinois currently has the basic
6 federal PSD program, as Illinois implements the
7 federal PSD program under a delegation agreement
8 with US EPA. This PSD program is a
9 pre-construction permitting program that, when
10 applicable to a proposed project, requires a
11 source to obtain a PSD permit before beginning
12 construction of a new major stationary source or
13 construction of a major modification of an
14 existing stationary source.

15 The PSD program addresses
16 proposed sources and modifications in areas that
17 are designated attainment or unclassifiable for
18 pollutants which there are ambient air quality
19 standards. In addition, this proposal would
20 include relevant amendments to the Board's
21 procedural regulations necessary to accommodate
22 appeal -- appeals, excuse me, of PSD permits to
23 the Board.

24 These changes would be

1 memorialized in 35 Ill. Adm. Code General Rules
2 and 35 Ill. Adm. Code Part 105 Appeals of Final
3 Decisions of State Agencies. Finally, this
4 proposal would include relevant amendments to the
5 Board's regulations 35 Ill. Adm. Code Part 203
6 Major Stationary Sources Construction and
7 Modification, 35 Ill. Adm. Code 211 Definitions
8 and General Provisions, 35 Ill. Adm. Code Part 215
9 Organic Material Admission Standards and
10 Limitation.

11 As certain provisions in these
12 regulations currently refer to permits issued
13 pursuant to the federal PSD program, the revisions
14 to these regulations would update these provisions
15 so that they address both the federal PSD program,
16 which Illinois has historically implemented, and
17 new Part 204.

18 At this time, we would ask that
19 the witnesses be sworn in. Thank you.

20 HEARING OFFICER RABCZAK: I would
21 like to hear anybody else's statement first and
22 then if there is none, we'll proceed to that.

23 Would anyone else like to make
24 an opening statement in Chicago, in Springfield?

1 Okay. Mr. Court Reporter, could
2 you please swear in the witnesses.

3 WHEREUPON:

4 JASON SCHNEPP and CHRISTOPHER ROMAINE
5 called as witnesses herein, having been first duly
6 sworn, deposeth and saith as follows:

7 HEARING OFFICER RABCZAK: Okay.

8 Let's proceed to admitting the pre-filed
9 documents. So far, the Board received testimony
10 of the IEPA's witnesses Jason Schnep, sorry for
11 mispronouncing your name earlier, and Christopher
12 Romaine. If there is no objection, I'll admit
13 Mr. Schnep's testimony as Exhibit 1 and
14 Mr. Romaine's testimony as Exhibit 2.

15 (Document marked as Hearing
16 Exhibit No. 1-2 for
17 identification.)

18 HEARING OFFICER RABCZAK: The Board
19 also received pre-filed questions from Citizens
20 Against Ruining the Environment, CARE, I'll just
21 refer to them as CARE if there is no objection,
22 which was filed on November 19th at 3:00 p.m. by
23 Daryl Grable, do I pronounce that --

24 MR. GRABLE: Mm-hmm.

1 HEARING OFFICER RABCZAK: From
2 Chicago Legal Clinic. For the convenience of
3 citation -- and if there is no objection, I will
4 admit CARE's questions as Exhibit 3.

5 (Document marked as Hearing
6 Exhibit No. 3 for
7 identification.)

8 HEARING OFFICER RABCZAK: Next, we
9 received pre-filed questions of the Illinois
10 Environmental Regulatory Group, IERG, filed on
11 November 19th, 2018, at 4:30 p.m. by Hepler
12 Broom's attorney Katherine Hodge, LaDonna Driver,
13 I'm sorry if I'm mispronouncing any names, and
14 Daniel Siegfried.

15 If there is no objection, I
16 admit IERG's questions as Exhibit 4.

17 (Document marked as Hearing
18 Exhibit No. 4 for
19 identification.)

20 HEARING OFFICER RABCZAK: On
21 November 19th, 2018, the Hearing Officer order
22 also posted the pre-filed questions from the Board
23 members and Board staff. Again, just for the
24 convenience of citation, I'll admit Board's

1 questions as Exhibit 5.

2 (Document marked as Hearing
3 Exhibit No. 5 for
4 identification.)

5 HEARING OFFICER RABCZAK: Next,
6 let's proceed to the witnesses. Mr. Schnepf,
7 would you like to summarize your testimony?

8 MR. SCHNEPP: No, I'll just rely on
9 the testimony submitted.

10 HEARING OFFICER RABCZAK: Sorry. We
11 admit those testimonies as if read. So we don't
12 have to reread them.

13 Mr. Romaine, would you like to
14 summarize your testimony?

15 MR. ROMAINE: Sure. I'll summarize
16 my testimony very quickly.

17 As discussed in the Statement of
18 Reasons prepared by the Agency for this rulemaking
19 and in my testimony, the substantive provisions of
20 proposed 35 Ill. Adm. Code Part 204 have generally
21 been developed to reflect provisions of the
22 federal PSD rules. Thank you.

23 HEARING OFFICER RABCZAK: Thank you.
24 Next, we can proceed to the questions. Mr. --

1 Mr. Daryl Grable, you can proceed to ask any
2 questions.

3 MR. GRABLE: Do I just read them?

4 HEARING OFFICER RABCZAK: Say again.

5 MR. GRABLE: Do I just read them?

6 HEARING OFFICER RABCZAK: Yeah, can
7 you -- can you hear okay?

8 THE COURT REPORTER: Yes.

9 HEARING OFFICER RABCZAK: I can give
10 you a chair if you want to sit closer.

11 MR. GRABLE: I'm okay. I can talk
12 louder. Okay.

13 So my name is Daryl Grable. I'm
14 an attorney on behalf of Citizens Against Ruining
15 the Environment, also known as CARE.

16 So in the current rulemaking
17 proceeding, Illinois EPA has proposed amendments
18 to 35 Ill. Adm. Code Parts 101, 105, 203, 211, and
19 215. Title 2 of the Ill. Adm. Code Section 2175,
20 however, which governs the Illinois Pollution
21 Control Board's Organization, Public Information,
22 and Types of Proceedings, with Section 600
23 specifically addressing adjudicatory proceedings.

24 Title 2 of the Ill. Adm. Code

1 Section 2175.600(a) grants the Board the authority
2 to hear certain adjudicatory cases, while 2 Ill.
3 Adm. Code Section 2175.600(a)(2) governs the
4 permit appeals the Board may hear. That portion
5 of the administrative code provides that certain
6 third-parties may petition the Board for a hearing
7 to contest the decision of the Agency only in the
8 specified limited instances where the Agency
9 grants a RCRA permit for a hazardous waste
10 disposal site or grants or denies a National
11 Pollution Discharge Elimination System (NPDES)
12 permit.

13 This is at odds with proposed 35
14 Ill. Adm. Code Section 105.604(c), which appears
15 to grant the authority to appeal an Agency
16 permitting decision to any person who participated
17 in the Agency public comment process for a PSD
18 permit and is either aggrieved or has an
19 interest that is or may be adversely affected by
20 the PSD permit.

21 In other words, proposed 35
22 Ill. Adm. Code Section 105.604(c) grants the
23 authority to appeal PSD permitting decisions to
24 certain third-parties like those referenced in 2

1 Ill. Adm. Code Section 2175.600(a)(2).

2 A. Is there currently a
3 rulemaking proceeding underway that will amend 2
4 Ill. Adm. Code Section 2175.600(a)(2) to include
5 the rights of third-parties in permit appeals
6 concerning Clean Air Act PSD permitting decisions?

7 HEARING OFFICER RABCZAK: Before we
8 begin, I just want to clarify this is number one,
9 question number one from CARE's questions.

10 MS. CARTER: With regard to question
11 number one, the Agency will be responding to this
12 question in post-hearing comments given its legal
13 nature.

14 HEARING OFFICER RABCZAK: So that
15 was 1(a).

16 MR. GRABLE: 1(a)(i). If this is
17 not the case, what are the practical effects of
18 this on the rights of third-parties in appealing
19 final PSD permitting decisions?

20 MS. CARTER: The same response.

21 MR. GRABLE: Question 1(a)(ii). If
22 this is not the case, will Illinois EPA pursue the
23 appropriate course of action necessary to amend
24 Title 2 of the Ill. Adm Code Section

1 2175.600(a)(2) to accurately reflect the proposed
2 amendments in the immediate proceedings?

3 MS. CARTER: Again, the same answer.

4 MR. GRABLE: So question 2. At page
5 76 of the Statement of Reasons, Illinois EPA
6 explains that it is not including 40 CFR Section
7 52.21(0)(3) in proposed Section 204.1140. 40 CFR
8 Section 52.21(0)(3) provides the administrator
9 with the option of requiring visibility monitoring
10 in any federal Class 1 area near a proposed new
11 stationary source or major modification as is
12 necessary and appropriate.

13 The provided reasons for not
14 including 40 CFR Part 52.21(0)(3) are that, one,
15 40 CFR Section 51.166(p) does not mandate that
16 each applicable State Implementation Plan
17 submitted to US EPA for review and approval
18 contain such a requirement, and, two, no Class 1
19 area exists in Illinois or in close proximity to
20 Illinois.

21 A. Why does Illinois EPA
22 believe that the fact that no Class 1 areas
23 currently exist in Illinois provides support for
24 the proposed action?

1 MR. ROMAINE: This is Chris Romaine.
2 The fact that Illinois currently does not have any
3 Class 1 areas means that the absence of such
4 provision in Part 204 similar to 40 CFR
5 52.21(0)(3) currently does not have any effects or
6 consequences. Before the absence or presence of
7 such provision would have any consequences, the
8 State of Illinois would first have to complete the
9 formal process to redesignate an area to Class 1.

10 As such, this series of
11 questions speculating on the provision --
12 speculating on potential value for requirements
13 for visibility monitoring for any Class 1 area
14 that might be created by the State of Illinois in
15 the future pursues a matter that is not needed for
16 the US EPA to approve a state PSD program for
17 Illinois.

18 MR. GRABLE: 2B. Given that 40 CFR
19 Section 52.21(g) explicitly provides states and
20 Indian governing bodies the authority to
21 redesignate areas as Class 1, what relevancy does
22 the current lack of Class 1 designations have on
23 the potential of future Class 1 designations?

24 MR. ROMAINE: It is unquestioned

1 that the State of Illinois currently has the legal
2 authority under Section 164(a) of the Clean Air
3 Act to redesignate areas in Illinois from Class 2
4 to Class 1 under the PSD program subject to the
5 procedural requirements set forth in 40 CFR
6 52.21(g). Section 204.930(b) would act to confirm
7 this authority.

8 The fact that the State of
9 Illinois does not -- has not undertaken any such
10 redesignation does not show that the state does
11 not have this authority. However, as a practical
12 matter, it may be relevant that in over 35 years
13 that the PSD program has been in existence the
14 State of Illinois has not redesignated any areas
15 in Illinois to Class 1 under the PSD program.

16 MR. GRABLE: Question 2(c). As
17 class --

18 HEARING OFFICER RABCZAK: Sorry.
19 One question. If anybody has a follow-up
20 question, just raise your hand and we can
21 accommodate.

22 MR. GRABLE: Question 2(c). As
23 Class 1 designations most often apply to such
24 lands as US wilderness areas, national parks and

1 forests, and other federally-protected lands,
2 given Illinois' trend of increasing total federal
3 acreage within its borders (16.5% increase from
4 1990 to 2015), isn't it possible that the State of
5 Illinois may want to use its authority to
6 designate these lands as Class 1 in the future?

7 MR. ROMAINE: It is certainly
8 possible that in the future the State of Illinois
9 may elect to redesignate areas in Illinois from
10 Class 2 to Class 1 under the PSD program.
11 However, any such area would not be a federal
12 Class 1 area. As such, even under 40 CFR
13 52.21(0)(3), the federal PSD rules would not
14 provide for the US EPA to impose requirements for
15 visibility monitoring related to such an area.

16 In this regard, 40 CFR
17 52.21(0)(3) provides visibility monitoring. The
18 administrator may require monitoring of visibility
19 in any federal (emphasize added) Class 1 area and
20 then I'm also stressing the words near the
21 proposed new stationary force, source, we have a
22 typo, for, instead of or, major modification for
23 such purposes, emphasized, and by such means,
24 emphasized, as the administrator deems necessary

1 and appropriate, again emphasize added.

2 It is also noteworthy that based
3 on the reference for the data cited with this
4 question the federal ownership of land in Illinois
5 has not increased that significantly over the past
6 25 years. The percentage of land owned by the
7 federal government in Illinois has risen from 0.99
8 to 0.15 percent from 1990 to 2015. 1.15 percent.
9 Excuse me. From 1990 to 2015. In other words,
10 the percentage of land not owned by the federal
11 government changed from 99.1 to 98.85 percent.
12 Maybe that should be 99.01. Oh, well.

13 HEARING OFFICER RABCZAK: You can
14 file after the hearing to correct anything.

15 MR. GRABLE: Question 2(d). As the
16 goal of the PSD program is to protect public
17 health and welfare from the adverse effects of
18 increased air pollution, isn't Illinois EPA's
19 proposed elimination of the opportunity to require
20 additional air monitoring antithetical to the
21 Clean Air Act at large, and to the PSD program in
22 particular?

23 MR. ROMAINE: This question reflects
24 a flawed understanding of the system of PSD

1 increments established under Section 163 of the
2 Clean Air Act. The purpose of PSD increments is
3 to prevent significant deterioration of air
4 quality. Other elements of the PSD program
5 supplement the provisions of the Clean Air Act
6 whose purpose is to protect public health and
7 welfare from air pollution.

8 These requirements of the Clean
9 Air Act that are directed to protection of public
10 health and welfare include the adoption of
11 National Ambient Air Quality Standards by US EPA,
12 Section 108 of the Clean Air Act, the general
13 requirement for states to develop State
14 Implementation Plans, or SIP's, Section 110 of the
15 federal Clean Air Act and the specific
16 requirements for SIP's for non-attainment areas
17 Section 174 through 191 of the federal Clean Air
18 Act.

19 In contrast, the PSD increments
20 simply restricts the magnitude of the
21 deterioration that is allowed for certain
22 pollutants from baseline levels of air quality
23 with different values for the allowable
24 deterioration based on the designation of the

1 area, Class 1, Class 2 or Class 3.

2 While the smallest PSD
3 increments apply for Class 1 areas, those
4 increments were established to address air quality
5 related values in such areas, not public health or
6 as that term is commonly understood human welfare.
7 These air quality related values include
8 protection of specific ecosystems in such an area,
9 particularly as species or ecosystems may be
10 present that are especially sensitive to air
11 quality, these air quality related values may also
12 include protection of scenic vistas or visibility.

13 The presence of air quality
14 related values in an area that is -- warrants
15 redesignation of an area from Class 2 to Class 1
16 is a matter that is necessarily addressed during
17 the administrative process by which an area may be
18 proposed for redesignation by a state.

19 MR. GRABLE: My follow-up question.
20 Did Illinois EPA not say on Part A of the
21 Statement of Reasons that the PSD program seeks to
22 protect public health and welfare from the adverse
23 effects of air pollution, which is what I said?

24 MR. ROMAINE: Yes, but that does not

1 mean that the Class 1 increments are intended to
2 protect public health and welfare.

3 MR. GRABLE: I mentioned the PSD
4 program for just what I referenced with that.
5 Question 2(e).

6 HEARING OFFICER RABCZAK: Sorry. I
7 have a follow-up question.

8 How does the program, the
9 proposed rule, accommodate effect on Class 1 areas
10 outside of the state? Does it or does it not?

11 MR. ROMAINE: It does.

12 HEARING OFFICER RABCZAK: In what
13 way?

14 MR. ROMAINE: It requires an
15 applicant for a PSD permit to show that it would
16 not have adverse impacts on Class 1 areas that
17 include showing that the Class 1 increments are
18 not involved -- exceeded in such area. It also
19 requires consultation with the federal land
20 manager if the federal land manager believes it's
21 appropriate.

22 HEARING OFFICER RABCZAK: Do you
23 remember the provision in the proposed rule?

24 MR. ROMAINE: The provisions

1 addressing federal Class 1 areas are in Subpart G.
2 The provisions generally addressing Class 1
3 impacts I believe are in Section 204.1110, is that
4 correct?

5 MS. CARTER: No.

6 MR. ROMAINE: 11110.

7 HEARING OFFICER RABCZAK: Another
8 question I have is if Illinois redesignates and
9 finally has a Class 1 area, what would be the
10 process to amend this rule in terms of
11 simultaneous proceeding of both?

12 Would there be a gap in time
13 between the redesignation of Class 1 area and
14 amending these rules or would IEPA plan to proceed
15 simultaneously?

16 MS. CARTER: That would be a legal
17 question that we would be prepared to answer in
18 post-hearing comments.

19 HEARING OFFICER RABCZAK: Okay.
20 Thank you.

21 MR. KLEIN: If I can follow-up on
22 that because I think in the pre- -- response to
23 the previous question, I think there was an
24 emphasis in distinguishing when there is a federal

1 class -- reclassification into a Class 1 area and
2 the state reclassifies it to a Class 1 area, did I
3 understand that correctly?

4 MR. ROMAINE: That is correct.

5 MR. KLEIN: So in the insinuation
6 there, the implication is if the state
7 reclassifies it, it doesn't necessarily mean in
8 order to comply with the Clean Air Act that we
9 would have to amend the PSD program?

10 MR. ROMAINE: I would prefer to
11 Ms. Carter's --

12 MR. KLEIN: That is a legal
13 question --

14 MS. CARTER: We'll respond to that
15 in post-hearing comment.

16 MR. ROMAINE: I think it's addressed
17 in subsequent questions the Board has asked.

18 HEARING OFFICER RABCZAK: Thank you.

19 MR. KLEIN: Thank you.

20 HEARING OFFICER RABCZAK: You can
21 proceed.

22 MR. GRABLE: Question 2(e). If
23 neither Illinois nor the relevant Indian governing
24 bodies opt to use their authority to redesignate

1 lands as Class 1, is there any cost to preserve
2 the authority found in 40 CFR Section 52.21(0)(3)?

3 MR. ROMAINE: First, that
4 presupposes that there is authority in 40 CFR
5 52.21(0)(3) that could be prever- -- preserved as
6 a state rule. Obviously, that would mean that the
7 Illinois EPA or the State of Illinois, the
8 Pollution Control Board, would be providing
9 authority to US EPA. But, beyond that, there
10 would be several costs or impacts from including a
11 parallel provision to 40 CFR 52.21(0)(3) Part 204.

12 For example, such provision
13 would be confusing to applicants for PSD permits
14 as it would suggest that Illinois has Class 1
15 areas. Such a provision would suggest that the
16 State of Illinois has determined that visibility
17 would be an air quality related value in any area
18 that it would redesignate to Class 1. Moreover,
19 such a provision would suggest an applicant for
20 PSD permit may be required to conduct visibility
21 monitoring in such an area respective of whether
22 the applicant can obtain the necessary permit or
23 approval from the body that actually manages the
24 area in which such monitoring would be required.

1 Lastly, it would require the
2 Board to elaborate upon the wording of 40 CFR
3 52.21(0)(3) as it provides for monitoring of
4 visibility for such purposes by such means and as
5 necessary and appropriate.

6 HEARING OFFICER RABCZAK: Thank you.

7 MR. GRABLE: Question 2(f). Given
8 the potential for future Class 1 designations in
9 Illinois, can Illinois EPA articulate any reason
10 for eliminating this potential pollution
11 monitoring mechanism apart from the fact that they
12 are not explicitly required by 40 CFR Section
13 51.166(p) to include it?

14 MR. ROMAINE: As already discussed,
15 there are a variety of reasons for not having a
16 parallel provision to 40 CFR 52.21(0)(3) in Part
17 204 beyond the fact that it's not required by 40
18 CFR 51.166. Moreover, while visibility may be an
19 air quality related value in certain areas,
20 including mandatory federal Class 1 areas in which
21 visibility has been identified as an air quality
22 related value, monitoring of visibility does not
23 provide direct measurements of concentrations and
24 pollutants in the atmosphere.

1 MR. GRABLE: Follow-up question. In
2 terms of the implementing statute for Section 91
3 Part C of the Illinois Environmental Protection
4 Act, is there any portion of that which allows the
5 Illinois EPA to lessen standards? Because I know
6 there is plain language that says they can
7 adopt -- the Board may adopt more stringent
8 additional provisions and explicitly lists Section
9 A, Q, S and T as the parts of 40 CFR Part 52.21
10 that will not be included -- incorporated by
11 reference.

12 MS. CARTER: And the Agency will
13 respond to that legal question in post-hearing
14 comments.

15 MR. GRABLE: Okay. Question 3.

16 MR. ROMAINE: Wait a minute. I have
17 a final comment that I forgot to mention.

18 HEARING OFFICER RABCZAK: Go ahead.

19 MR. ROMAINE: Obviously, if the
20 Board determines that it is appropriate for Part
21 204 to have a parallel provision similar to 40 CFR
22 52.21(0)(3), Illinois would be happy to work with
23 the Board to provide such suggestion for such
24 revision.

1 HEARING OFFICER RABCZAK: Thank you.

2 MR. GRABLE: Question 3. Under
3 Illinois' existing PSD permitting scheme, United
4 States Environmental Protection Agency's
5 Environmental Appeals Board, the EAB, is the
6 adjudicatory body governing PSD permitting
7 appeals. As a federal entity, the EAB has
8 acknowledged that it has a legal requirement due
9 to Executive Order 12898 to address and consider
10 environmental justice issues if they are raised as
11 part of a PSD permit appeal.

12 In addition, multiple EAB
13 decisions have held that a permit issuer should
14 exercise its discretion to examine any
15 superficially plausible claim that a minority or
16 low-income population may be disproportionately
17 affected by a particular facility that is the
18 subject of a PSD permit proceeding.

19 Although Illinois EPA has its own
20 established environmental justice policy, the
21 concept of environmental justice is not mentioned
22 in either the proposed Board rules or in Illinois
23 EPA's Statement of Reasons, nor is it a part of
24 established Board precedent.

1 Question 3(a). Can Illinois EPA
2 clarify whether the Board will be required to
3 evaluate the adequacy of Illinois EPA's
4 environmental justice-related permit decisions as
5 part of a PSD permit appeal?

6 MS. CARTER: The Agency will be
7 responding to this legal question in its
8 post-hearing comments.

9 MR. GRABLE: Okay. Question 3(b).
10 In the portion of the Statement of Reasons
11 addressing proposed amendments to Part 105 Subpart
12 F, PSD permit appeals, beginning on page 88,
13 Illinois EPA relies heavily on established EAB
14 precedent, directly citing to more than 20 EAB
15 decisions and justifying a proposed standard of
16 review on the basis that it has been the same
17 standard of review employed by US EPA's EAB in its
18 review of any PSD decisions issued by delegated
19 agencies and/or US EPA Regional Offices.

20 Question 3(b)(i). Does
21 Illinois EPA believe that this same logic should
22 apply to the legal relevancy of environmental
23 justice concerns, that because of their undeniable
24 relevance in EAB PSD adjudications, the same legal

1 relevancy should apply in subsequent Board PSD
2 permit appeals?

3 MS. CARTER: And the Agency will be
4 responding to this in post-hearing comment.

5 MR. GRABLE: Question 3(c). Does
6 Illinois EPA believe that states should be
7 permitted to assume control of federal permitting
8 programs for purposes of relaxing legal
9 requirements contained therein?

10 MS. CARTER: And, again, the same
11 response we'll be responding in post-hearing
12 comments.

13 MR. GRABLE: Question 3(d). As
14 allowing for environmental justice concerns to be
15 raised in PSD permit appeals is both legal and
16 practical, is Illinois EPA still committed to
17 protecting the health of the citizens of Illinois
18 and its environment, and to promoting
19 environmental equity in the administration of its
20 programs to the extent it may do so legally and
21 practicably as it is claimed on its website?

22 MS. CARTER: The Illinois EPA will
23 be responding to that in post-hearing comments.

24 MR. GRABLE: Question 3(e). Is

1 Illinois EPA of the opinion that eliminating the
2 ability to raise environmental justice concerns
3 and PSD permit appeals is supporting the
4 objectives of achieving environmental equity for
5 all of the citizens of Illinois as it purports to
6 do on its website?

7 MS. CARTER: We'll be responding to
8 this in post-hearing comments.

9 HEARING OFFICER RABCZAK: Does
10 anybody have a follow-up question? Chicago?
11 Springfield? Let's now proceed to the questions
12 from IERG.

13 MS. DRIVER: Thank you. Question 1.

14 HEARING OFFICER RABCZAK: Can you
15 please identify yourself?

16 MS. DRIVER: I'm sorry. LaDonna
17 Driver, D-R-I-V-E-R, outside counsel for the
18 Illinois Environmental Regulatory Group, which
19 I'll refer to as IERG for short.

20 HEARING OFFICER RABCZAK: Thank you.
21 You may proceed.

22 MS. DRIVER: Question 1. In the
23 pre-filed testimony, Mr. Jason Schnepf states that
24 provisions of the proposed rule generally mirror

1 the provisions of the existing federal PSD rule at
2 40 CFR 52.21. Mr. Schnepf also addressed PSD
3 applicability in his pre-filed testimony.

4 Would PSD applicability differ
5 under the proposed Part 204 regulations from PSD
6 applicability under 40 CFR 52.21?

7 MR. SCHNEPP: This is Jason Schnepf.
8 As proposed, on July 2nd, 2018, PSD applicability
9 under 40 CFR 52.21 would not differ from PSD
10 applicability under proposed Part 204. Changes
11 made to the applicability requirements of 40 CFR
12 52.21 would potentially result in differences in
13 applicability between 40 CFR 52.21 and Part 204 in
14 the future -- changes in the future.

15 MS. DRIVER: Thank you. Just
16 following up on that statement, Mr. Schnepf. If
17 those changes to 52.21 happen in the future from
18 what you're saying, then the Agency and the Board
19 would then consider updates to Part 204 to mirror
20 those?

21 MR. SCHNEPP: We'll respond to that
22 in post-hearing comments.

23 MS. DRIVER: Thank you. Question 2.
24 Mr. Romaine addressed the analysis and control

1 requirements of the PSD program in his pre-filed
2 testimony filed on November 8th.

3 Would analysis and control
4 requirements under the proposed Part 204
5 regulations differ from the corresponding
6 requirements under 40 CFR 52.21?

7 MR. ROMAINE: As proposed, the
8 analysis and control requirements under 40 CFR
9 52.21 would generally not defer from the analysis
10 and control requirements under proposed Part 204.
11 However, instances exist where Part 204 is
12 superficially more stringent than 40 CFR 52.21.
13 For instance, 35 Ill. Adm. Code 204.280 Best
14 Available Control Technology and Section 204.1100
15 Control Technology Review, the Illinois EPA added
16 reference to 40 CFR Part 62 and 63.

17 The definition of Best Available
18 Control, or BACT, would now provide that in no
19 event shall the application of BACT result in
20 emissions of any pollutant which it would exceed
21 the emissions allowed by any applicable standard
22 under 40 CFR Part 60, 61, 62 and 63 as well. This
23 would maintain consistency with the requirements
24 of Section 1963 of the Clean Air Act, which in the

1 definition of BACT refers to requirements under
2 Sections 111 or 112 of the Clean Air Act rather
3 than to parts of the CFR.

4 HEARING OFFICER RABCZAK: Can I
5 clarify that proposed 204 is less stringent?

6 MR. ROMAINE: No.

7 HEARING OFFICER RABCZAK: More
8 stringent?

9 MR. ROMAINE: Superficially more
10 stringent. 35 Ill. Adm. Code Part 204.860
11 Exemptions, the Illinois EPA has not proposed to
12 carry over the exemptions from pre-construction
13 ambient monitoring for any of the pollutants
14 currently addressed in 40 CFR 52.21(i). US EPA
15 maintains that it has authority to adopt
16 significant monitoring concentrations, or SMC's,
17 for pollutants other than particulate matter 2.5,
18 or PM 2.5. The adopted SMC's may be used to
19 explicitly exempt an owner or operator of a
20 proposed source or modification from being
21 required to undertake a project specific
22 pre-construction ambient air quality monitoring
23 program to satisfy Section 165(e)(2) of the Clean
24 Air Act.

1 In such circumstances, other
2 appropriate data for existing ambient air quality
3 may be used. In this regard, the ambient
4 monitoring networks operated by state and local
5 agencies commonly include ambient monitoring
6 stations that are located at sites that can
7 provide air quality data that is considered
8 representative of the area in which proposed
9 projects would take place.

10 In addition, and as a general
11 matter, if changes are made by US EPA to the
12 analysis and control requirements of 40 CFR 52.21
13 in the future, the analysis and control
14 requirements under 40 CFR 52.21 and Part 204 may
15 differ.

16 HEARING OFFICER RABCZAK: Thank you.

17 MS. DRIVER: Thank you, Mr. Romaine.

18 MS. TIPSORD: Wait.

19 MS. PAPADIMITRIU: This is Chairman
20 Papadimitriu. I have a question -- a follow-up
21 question for you, sir.

22 Could you please define
23 significantly more stringent --

24 MS. DRIVER: Superficially.

1 MS. PAPADIMITRIU: Superficially
2 more stringent. My apologies.

3 MR. ROMAINE: That would mean that
4 in certain regards we haven't updated the rules to
5 more accurately address what's required by the
6 Clean Air Act or federal court decisions. I do
7 not believe that, in practice, those would have
8 any different effects than the PSD program that is
9 currently being administered. I guess who do I
10 talk to?

11 MS. PAPADIMITRIU: Thank you.

12 MS. DRIVER: Just one item of
13 follow-up on Mr. Romaine's answer.

14 Ms. Carter, if you could in the
15 follow-up comments also respond to the same
16 question I asked Mr. Schnepf was that if the 52.21
17 provisions are updated in the future, what would
18 be then the procedure for making corresponding
19 updates to Part 204, just the same question as
20 what Mr. Romaine said on the analysis and control
21 requirements?

22 MS. CARTER: Specific to the air
23 quality analysis and additional analysis as well,
24 correct?

1 MS. DRIVER: Correct.

2 MS. CARTER: Okay.

3 MS. DRIVER: Thank you.

4 MS. CARTER: Thanks.

5 MS. DRIVER: Moving onto question 3.

6 How many states have State
7 Implementation Plan, or SIP, approved PSD
8 programs?

9 MR. SCHNEPP: Based on the
10 information that the Illinois EPA could locate
11 online, 46 states have SIP-approved PSD programs.
12 Some states, California, for example, are divided
13 by county or districts each of which may have
14 varying SIP-approved PSD program status. The
15 entire State of Illinois is addressed by a US EPA
16 delegated PSD program.

17 MS. DRIVER: Thank you, Mr. Schnepf.
18 So you may have de facto answered question 4.

19 How many states have US EPA
20 delegated PSD programs?

21 MR. SCHNEPP: I'm not sure that I
22 did. So I'll give you my answer and I'll let you
23 see if you have a follow-up question.

24 Based on the information that

1 the Illinois EPA could locate online, seven states
2 have US EPA delegated PSD programs. These
3 include; Arizona, California, Hawaii, Illinois,
4 Massachusetts, Nevada and New Jersey.

5 For Arizona, three counties have
6 US EPA delegated PSD programs and the entire state
7 is under a greenhouse gas delegation agreement.

8 For California, the state is divided into air
9 quality management districts, some of which have
10 SIP-approved PSD programs and some have US EPA
11 delegated PSD programs. And for Nevada, the
12 entire state is delegated except for one county
13 which is SIP-approved.

14 MS. DRIVER: Thank you, Mr. Schnepf.
15 Question 5.

16 Specifically, in US EPA Region
17 5, how many states have SIP-approved PSD programs
18 versus delegated PSD programs?

19 MR. SCHNEPP: Of the six states in
20 US EPA Region 5, five states currently have
21 SIP-approved PSD programs; Indiana, Michigan,
22 Minnesota, Ohio and Wisconsin. The federal PSD
23 permit program currently applies in Illinois and
24 is administered by the Illinois EPA pursuant to a

1 delegation agreement between the Illinois EPA and
2 US EPA.

3 MS. DRIVER: Thank you. Question 6.
4 In Illinois EPA's Statement of Reasons filed in
5 this matter, Illinois EPA mentions a separate
6 rulemaking to amend Part 252 to accommodate a
7 SIP-approved PSD program in Illinois.

8 What are Illinois EPA's plans
9 for that rulemaking?

10 MR. SCHNEPP: The Illinois EPA
11 intends to propose Agency regulations addressing a
12 state-based PSD program. While a specific
13 schedule has not yet been developed, the Illinois
14 EPA tentatively plans to have revisions to Part
15 252 finalized shortly after the completion of this
16 Board rulemaking.

17 MS. DRIVER: Thank you.

18 HEARING OFFICER RABCZAK: Does
19 anybody else have any follow-up questions? It's
20 10:00 -- almost 10:00. I propose to break now
21 before we proceed with the Board's questions and
22 resume in ten minutes and I'll air out the room.

23

24

1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 HEARING OFFICER RABCZAK: We are
5 back on the record and we will proceed with the
6 Board's questions now.

7 Question 1. Please explain if
8 IEPA hosted a stakeholder process in developing
9 the proposed rule. If so, please provide the list
10 of stakeholders that participated in that process.

11 MR. SCHNEPP: This is Jason Schnepf.
12 During the development of this proposal, the
13 Illinois EPA met with representatives from sources
14 potentially subject to Part 204. In addition,
15 given the language proposed to address the
16 distinction between administrative matters
17 reviewed by the Board and administrative actions
18 taken by the Illinois EPA and the office of the
19 Illinois State Fire Marshals Office, OSFM, the
20 Illinois EPA provided a draft of proposed Part's
21 101 and 105 to the OSFM.

22 Subsequent discussions were held
23 between counsel for the Illinois EPA and the OSFM.
24 On October 2nd, 2017, the Illinois EPA posted

1 online a draft of these proposed regulations
2 including Part 204 and proposed amendments to Part
3 101 and 105. The Illinois EPA also notified
4 public interest groups and other interested
5 individuals of these proposed regulations
6 soliciting comments on the draft proposal.

7 The Illinois EPA also engaged in
8 outreach on this proposal with US EPA providing
9 this proposal to US EPA Region 5 for preliminary
10 review and comment. The stakeholders that
11 participated in the process were US EPA,
12 representatives of the Illinois Environmental
13 Regulatory Group, Sierra Club, Environmental Law &
14 Policy Center and Trinity Consultants.

15 HEARING OFFICER RABCZAK: Thank you.

16 MR. GRABLE: I have a follow-up
17 question.

18 Can Illinois EPA state why they
19 didn't do any consultation with the Illinois
20 Environmental Justice Commission or a reason for
21 not doing so?

22 MR. SCHNEPP: We'll respond to this
23 in post-hearing comments.

24 MS. ZALEWSKI: Thank you. When you

1 say outreach, when the initial outreach incurred,
2 did you just post it on your website? What is the
3 typical way of reaching out to different
4 organizations?

5 MS. CARTER: Hold on just one
6 minute. We will be responding in post-hearing
7 comments.

8 MS. ZALEWSKI: Okay.

9 HEARING OFFICER RABCZAK: Question
10 2. IEPA indicated that 40 CFR 51.166 addresses
11 regulations governing the state PSD programs
12 established pursuant to state law and submitted to
13 US EPA for approval and incorporation into SIP
14 while 40 CFR 52.21 governs further federal PSD
15 programs and applies in those states without a
16 SIP-approved PSD program.

17 The Board notes that Section
18 9.1(c) of the Environmental -- Illinois
19 Environmental Protection Act directs the Board to
20 incorporate 40 CFR 52.21 by reference in its
21 regulations to establish a PSD program. IEPA's
22 proposal for a state PSD program, however, is
23 based on 40 CFR 52.21 and not 40 CFR 51.166.

24 For the clarity of the record,

1 please explain why.

2 MR. ROMAINE: So the first thing
3 I'll simply say is that while the role of 40 CFR
4 51.166 and 52.21 are different, they both deal
5 with the same substantive PSD program and
6 obviously one of them is guidelines for which
7 should be in a SIP. The other is an actual PSD
8 program. In fact, while our proposal is based
9 mainly on 40 CFR 52.21, the Illinois EPA also
10 considered 40 CFR 51.166 during the development of
11 proposed regulations.

12 This was clearly explained in
13 the Statement of Reasons page 29 and 30 which
14 provided given the interplay between these federal
15 and state law requirements, the Illinois EPA is
16 proposing a state PSD program based largely on the
17 language of 40 CFR 52.21, but also ensuring that
18 this program meets the requirements for SIP
19 submittal to US EPA in 40 CFR 51.166.

20 HEARING OFFICER RABCZAK: Please
21 also explain, is it IEPA's interpretation of
22 Section 9.1(c) of the act that the Board rules
23 must be modeled on 40 CFR 52.21 rather than
24 incorporated by reference?

1 MR. ROMAINE: A legal response to
2 this question will be provided by the Illinois EPA
3 in our post-hearing comments.

4 However, as a practical matter,
5 implementation of the PSD permitting program by
6 means of an incorporated rule would be
7 challenging. At a basic level, 40 CFR 52.21 was
8 not developed by US EPA so that it could be
9 regularly incorporated by reference by a state or
10 local governmental body. One cannot simply
11 declare that as a matter of state regulations 40
12 CFR 52.21 applies in Illinois with a substitution
13 of the Illinois EPA in place of the administrative
14 US EPA. There are provisions in 40 CFR 52.21 in
15 which the Illinois EPA cannot substitute for the
16 US EPA. For example, the opening paragraph of the
17 definition of subject to regulation 40 CFR
18 52.21(b)(49) specifically refers to regulatory
19 actions by US EPA.

20 In addition, it includes an
21 internal reference to the Code of Federal
22 Regulations and I quote 40 CFR 52.21(b)(49)
23 subject to regulation means for any air pollutant
24 that the pollutant is subject to either a

1 provision in the Clean Air Act or a natural
2 applicable regulation codified by the
3 administrator in Subchapter C of this chapter.
4 That requires actual control for the quantity of
5 emissions of that pollutant and that such a
6 control requirement has taken effect and is
7 operative to control, limit or restrict the
8 quantity of emissions of that pollutant released
9 from the regulated activity dot, dot, dot.

10 US EPA also has not updated 40
11 CFR 52.21 to respond to certain federal court
12 decisions that are relevant to the implementation
13 of the PSD permit program. For example, we
14 discuss further response to another question 40
15 CFR 52.21(b)(4) the definition of potential to
16 emit still provides that a limitation must be
17 federally enforceable or enforceable by the US EPA
18 to restrict a source's potential to emit a
19 pollutant. However, as US EPA has recognized in a
20 memorandum, a limitation that is only enforceable
21 by a state or local permitting authority can now
22 also serve to restrict the source's potential
23 emissions.

24 The consequences of

1 circumstances such as these is that even if
2 Illinois incorporated provisions of 40 CFR 52.21
3 by reference, a detailed state rule would still
4 have to be adopted setting forth the various
5 adjustments to the text of 40 CFR 52.21 necessary
6 for a US EPA approved state PSD program. The
7 development and subsequent implementation of a
8 single comprehensive state PSD rule will be far
9 simpler for the Board, the Illinois EPA and the
10 Office of the Attorney General.

11 HEARING OFFICER RABCZAK: Thank you.
12 Question 2(b).

13 What are the main differences
14 between 40 CFR 51.166 and 40 CFR 52.21 that are
15 relevant to this proposal?

16 MR. ROMAINE: Well, as explained,
17 the main differences between 40 CFR 51.166 and 40
18 CFR 52.21 involves their function.

19 The regulatory guidance for
20 state PSD programs established pursuant to state
21 law and approved by US EPA for incorporation into
22 state SIP's is codified at 40 CFR 51.166. In
23 these SIP-approved state PSD programs, the
24 relevant permitting authority that issues PSD

1 permits is the state or local air pollution
2 control agency.

3 Meanwhile, the regulations for
4 the federal PSD programs that are set forth in 40
5 CFR 52.21, these regulations directly apply in
6 those states without a SIP-approved PSD program.
7 In these circumstances, the US EPA is the
8 permitting authority. However, a state or local
9 permitting agency typically enters into a
10 delegation agreement with US EPA to process PSD
11 permit applications on behalf of US EPA proposed
12 projects that would occur within their area of
13 jurisdiction.

14 Another difference between 40
15 CFR 52.21 and 51.166 would be the administrative
16 tribunal reviewing any permitting decision. A PSD
17 permit issued by the Illinois EPA has been and is
18 currently subject to review by US EPA
19 Environmental Appeals Board in accordance with 40
20 CFR 124.19. Section 124.19 limits the
21 Environmental Appeals Board's review to PSD
22 permits issued by the US EPA or delegated agencies
23 on behalf of US EPA.

24 Part 124 does not apply to PSD

1 permits issued under a SIP-approved PSD program
2 and that's supported by the decision by the
3 Environmental Appeals Board In Re: Zion Energy,
4 LLC 9 EAD 701, 701-702 footnote one and it's also
5 addressed In Re: Dominion Energy Brayton Point,
6 LLC, PSD appeal number 901, slip opinion at 2-3
7 and that decision provided the EAB's jurisdiction
8 to review PSD permits extends only to those issues
9 relating to permit conditions that implement the
10 federal PSD program.

11 However, once the State of
12 Illinois has its own SIP-approved PSD program, PSD
13 permits issued by the Illinois EPA will be subject
14 to Board review consistent with the procedural
15 requirements of Section 40.3 of the act, 415 ILCS
16 5/40.3 and 35 Ill. Adm. Code Part's 101 and 105.
17 While the Illinois EPA will be providing further
18 details in its post-hearing comments, some of the
19 notable substantive differences between 40 CFR
20 51.166 and 40 CFR 52.21 relative to this proposal
21 include the following.

22 One, to address an
23 administrative action by the Agency, that is to
24 accompany the processing of PSD permit

1 applications pursuant to Section 165(d)(1) of the
2 Clean Air Act and 40 CFR 51.166(p), the Illinois
3 EPA is proposing language in Section 204.1310
4 requiring the Agency to provide to the US EPA a
5 copy of each application for PSD permit that it
6 receives. Such a requirement is not present in 40
7 CFR 52.21.

8 Two, to address the public
9 participation requirements that must accompany the
10 processing of PSD permits as provided for by 40
11 CFR 52.166 -- 51.166(q), the Illinois EPA is
12 proposing similar language in Section 204.1320.
13 Proposed Section 204.1320 would reference the
14 Illinois EPA's public participation procedures at
15 35 Ill. Adm. Code Part 252.

16 Illinois is currently amending
17 to accommodate a SIP-approved PSD program in
18 Illinois. The federal PSD program at 40 CFR 52.21
19 generally makes use of the public participation
20 requirements of 40 CFR Part 124.

21 HEARING OFFICER RABCZAK: Thank you.
22 Question 2(c). Will modeling Board rules on 40
23 CFR 52.21, instead of 40 CFR 51.166, impact US
24 EPA's approval of the Illinois SIP?

1 MR. ROMAINE: Again, that's clearly
2 reflected in the Statement of Reasons. The
3 Illinois EPA has worked to ensure this proposal
4 addresses both 40 CFR 51.166 and 52.21. This was
5 addressed by the Illinois EPA in the Statement of
6 Reasons as it explained. Given the interplay
7 between these federal and state law requirements,
8 the Illinois EPA is proposing a state PSD program
9 based largely on the language of 40 CFR 52.21 but
10 also ensuring that this program meets the
11 requirements for a SIP submittal to US EPA in 40
12 CFR 51.166. Again, that was on page's 29 and 30
13 of the Statement of Reasons.

14 HEARING OFFICER RABCZAK: Thank you.

15 MS. CARTER: He's not done
16 responding.

17 MR. ROMAINE: In addition, Illinois
18 engaged -- Illinois EPA engaged in outreach on
19 this proposal with US EPA to further facilitate
20 SIP approval Part 204 by US EPA. To the extent
21 that changes are made to the proposal or
22 accompanying regulations in this rulemaking
23 process, these changes would affect US EPA's
24 approval of Part 204.

1 HEARING OFFICER RABCZAK: Thank you.

2 MR. KLEIN: So I'm Martine Klein,
3 attorney advisor to Carrie Zalewski. I'll be
4 asking the next question.

5 Question 3. In Section 9.1(c)
6 of the act provides that, quote, the Board may
7 adopt more stringent or additional provisions to
8 the extent it deems it's appropriate, end quote,
9 and, quote, nothing in Section 9.1(c) shall be
10 construed to limit the authority of the Board to
11 adopt elements of the PSD program that are more
12 stringent than those contained in 40 CFR 52.21,
13 end quote.

14 Question 3(a). Please identify
15 all provisions in IEPA's proposal that are
16 additional to or more stringent than those
17 contained in 40 CFR 52.21.

18 MR. ROMAINE: The Illinois EPA will
19 be providing a detailed response to this question
20 in post-hearing comments. We have discussed two
21 points in which the proposal is superficially more
22 stringent than the provisions of 52.21 in response
23 to the Illinois Environmental Regulatory Group's
24 question 2.

1 MR. GRABLE: I have three follow-up
2 questions.

3 First, can Illinois EPA also
4 identify all provisions of the proposal that are
5 less stringent or complete omissions than those
6 contained in 40 CFR 52.21?

7 MR. ROMAINE: It's my belief that we
8 have no provisions that are less stringent except
9 for this issue that CARE has raised with respect
10 to 40 CFR 52.21(0)(3), which we will be discussing
11 further as necessary in response to direction from
12 the Board.

13 MS. CARTER: And the Agency would
14 like to respond to this question as well in
15 further detail in post-hearing comments.

16 MR. GRABLE: Okay.

17 MS. CARTER: There were two parts to
18 the question just so I'm clear?

19 MR. GRABLE: Three.

20 MS. CARTER: Less stringent.

21 MR. GRABLE: And complete omissions.

22 MS. CARTER: Complete omissions.

23 Okay.

24 MR. GRABLE: Follow-up question 2.

1 Can Illinois EPA identify the authority granted to
2 them in the plain language of Section 9.1(c) of
3 the Illinois Environmental Protection Act to adopt
4 less stringent or omit entirely provisions
5 contained in 40 CFR Part 52.21?

6 MS. CARTER: And we'll be addressing
7 that in post-hearing comments.

8 MR. GRABLE: And then the third one.
9 Can Illinois EPA please address the discrepancy
10 that exists where proposed Section 204.600
11 Incorporations By Reference claims that the --
12 quote, the following materials are incorporated by
13 reference. These incorporations do not include
14 any later amendments or additions, end quote, and
15 then proceeds to amend -- or proceeds to list 40
16 CFR 52 as one of these sections that is not
17 amended in a later edition and -- but then later
18 proceeds to go on and provide an amendment to
19 52.21 in the proposed rule.

20 MS. CARTER: We will respond to that
21 in post-hearing questions. I just want to make
22 sure that the Agency understands the question.

23 MR. GRABLE: Do you want me to
24 rephrase?

1 MS. CARTER: Can you rephrase it? I
2 just want to make sure we can respond to the
3 question.

4 MR. GRABLE: So in part -- proposed
5 Section 204.100 Incorporations By Reference.

6 MS. CARTER: Okay. Can you just
7 slow down for me for just a moment.

8 MR. GRABLE: Yes. One of the
9 sections listed is 40 CFR Part 52.

10 MS. CARTER: Yes.

11 MR. GRABLE: So in that section,
12 those are the lists of incorporations by reference
13 that do not include any later amendments or
14 additions and then later on in the proposed
15 regulations 40 CFR Part 52 is getting an amendment
16 or an omission as for one part of it and I would
17 like an explanation for the discrepancy.

18 MS. CARTER: I now understand your
19 question. Thank you.

20 MR. GRABLE: Sorry I was confusing.

21 MR. ROMAINE: What is the later
22 provision?

23 MR. GRABLE: The later provision is
24 the section where I was referring to earlier where

1 you omit the 52.21(0)(3) from the proposed
2 regulations entirely.

3 MR. ROMAINE: I'm confused by the
4 question.

5 MR. GRABLE: I would just like an
6 explanation -- do you understand it?

7 MS. CARTER: I think I understand
8 it.

9 MR. ROMAINE: Obviously, we have
10 incorporated the entirety of 40 CFR 52.21 as
11 relevant to where it's been used in the rules, but
12 we have not specifically referenced or used in
13 this rule any reference to 52.21(0)(3).

14 MR. GRABLE: Okay.

15 MS. CARTER: We will be addressing
16 this further in post-hearing comments.

17 MS. ZALEWSKI: I have a follow-up
18 question. Is he finished?

19 MS. CARTER: I didn't know if he had
20 three questions.

21 HEARING OFFICER RABCZAK: Are you
22 finished?

23 MR. GRABLE: I'm done. Sorry.

24 MS. ZALEWSKI: Just a quick

1 follow-up to hammer it home. I think this has
2 been answered, but I just want to make sure it's
3 clear on the record.

4 3A you said that IEPA's proposal
5 is superficially more stringent, but your
6 testimony is that in practice it is not more
7 stringent, is that accurate?

8 MR. ROMAINE: That is my testimony
9 and we will review that as part of our
10 post-hearing comments.

11 MS. ZALEWSKI: Thanks.

12 HEARING OFFICER RABCZAK:
13 Mr. Grable, are you finished with your questions?

14 MR. GRABLE: Yes.

15 HEARING OFFICER RABCZAK: We can
16 resume.

17 MR. KLEIN: Just to be clear kind of
18 along the same lines, but in a different vein.
19 Because my understanding is that this proposal,
20 the proposed 204, anticipates changes that the US
21 EPA is going to make in response to US court cases
22 or is in the process of making amendments but are
23 not in the current Part 52 of 40 CF- -- of Title
24 40, is that correct?

1 MR. ROMAINE: No, it is not correct.

2 MR. KLEIN: Okay.

3 MR. ROMAINE: It addresses court
4 decisions that have already occurred that US EPA
5 has not yet --

6 MR. KLEIN: Finalized in their rule.

7 MR. ROMAINE: If they ever get
8 around to finalizing it in their rule.

9 MR. KLEIN: So we're anticipating --

10 MR. ROMAINE: We're simply
11 indicating that we are bound by the federal courts
12 to the extent that US EPA has been bound by the
13 federal courts.

14 MR. KLEIN: It is indicating that
15 Illinois is bound by the federal courts as the US
16 EPA has been found to be bound by the federal
17 courts?

18 MR. ROMAINE: That's correct. It's
19 a delegated authority.

20 MR. KLEIN: Okay.

21 MR. ROMAINE: I'll go out on a limb
22 and give a better example. When the court ruled
23 that the US EPA's PSD rules were inappropriate as
24 related to the approach to greenhouse gases and

1 the tailoring rule, the Supreme Court's decision
2 took effect immediately and altered 52.21
3 accordingly. US EPA did not immediately revise
4 52.21 to reflect the Supreme Court's decision, but
5 during that period of time until -- US EPA
6 completed some of the revisions they were bound by
7 and US EPA still has not yet completed all the
8 revisions it's making to address the Supreme
9 Court's decision and the Supreme Court's decision
10 was in 2012.

11 MS. CARTER: 2012.

12 MR. ROMAINE: Yeah, 2012.

13 Obviously, the US EPA does not act necessarily
14 quickly in updating 52.21.

15 MS. CARTER: 2014.

16 MR. ROMAINE: 2014. But it's still
17 four years ago. So there is outstanding court
18 decisions that have not yet been reflected in
19 specific revisions to 40 CFR 52.21, which
20 apparently we'll be addressing in the next
21 question.

22 HEARING OFFICER RABCZAK: Can I have
23 a follow-up question on this?

24 In terms of the way US EPA is

1 enforcing the PSD provisions in terms of complying
2 with the court requirements, to your knowledge, is
3 US EPA enforcing all of those requirements of the
4 courts already?

5 MR. ROMAINE: I cannot speak for
6 exactly what US EPA does.

7 HEARING OFFICER RABCZAK: So in your
8 practice --

9 MR. ROMAINE: I can tell you in
10 terms of the State of Illinois as the delegated
11 agent of US EPA we have acted as if we're bound by
12 the court's decision.

13 HEARING OFFICER RABCZAK: Okay.

14 MR. ROMAINE: This little bit of US
15 EPA's delegated authority does and --

16 HEARING OFFICER RABCZAK: So under
17 the --

18 MR. ROMAINE: -- and US EPA Region 5
19 does not disagree with that.

20 HEARING OFFICER RABCZAK: So under
21 the delegated authority, Illinois EPA has already
22 been enforcing the court's decision --

23 MR. ROMAINE: That is correct.

24 HEARING OFFICER RABCZAK: -- is that

1 correct?

2 MR. ROMAINE: That is correct.

3 HEARING OFFICER RABCZAK: Okay.

4 MS. DRIVER: If I can just ask a
5 question as well.

6 HEARING OFFICER RABCZAK: Go ahead.

7 MS. DRIVER: Before we move on from
8 the general questions, I think Mr. Schnepf and
9 Mr. Romaine have both made reference to some
10 discussions that Illinois EPA has been having with
11 US EPA about the proposed rule and I'm wondering
12 if US EPA has indicated any issues with the
13 proposed rule that aren't already being addressed
14 in this proceeding?

15 HEARING OFFICER RABCZAK: That's
16 Ms. Driver.

17 MS. DRIVER: Correct.

18 MR. ROMAINE: We have developed a
19 proposal that is consistent with US EPA's
20 expectation at this time. One of the areas which
21 we did have to address in discussion with the US
22 EPA is, in fact, the potential to emit and how the
23 language is -- that provision is worded to address
24 US EPA's guidance or memorandum in support to a

1 court's decision. That's how it's explained in
2 response to another question.

3 The Board asked the question
4 whether potential to emit would simply be limited
5 to restrictions that are enforceable by the State
6 of Illinois or the Illinois EPA. The US EPA
7 specifically indicated that their standard fix to
8 this language consistent with their guidance is
9 state or local air pollution control agency. So
10 there have been aspects of this proposal, in
11 particular the definition of potential to emit in
12 Section 204.560 that deal with this issue of
13 aspects of 52.21 that have not yet been resolved
14 by actual changes to the text of 52.21.

15 HEARING OFFICER RABCZAK: When you
16 talk about expectations of the US EPA, did you
17 have correspondence between you guys or was it
18 mostly phone calls and meetings?

19 MR. ROMAINE: It was based on oral
20 discussions.

21 HEARING OFFICER RABCZAK: Okay. Any
22 documents you have that you can submit into the
23 record?

24 MR. ROMAINE: We can review our

1 files, but I don't believe so.

2 HEARING OFFICER RABCZAK: Okay.

3 Thank you.

4 MR. KLEIN: Okay. Question 3(b).

5 Please address whether IEPA considered additional
6 or more stringent measures for its proposal as it
7 relates to greenhouse gases. If so, please
8 describe them and explain why they were or were
9 not included in the proposal.

10 MR. ROMAINE: In Part 204, the
11 Illinois EPA has proposed a number of changes
12 compared to the federal rules that are currently
13 at 40 CFR 52.21 to appropriately address the
14 relevant court decisions regarding the permitting
15 of greenhouse gases, GHG's, under the PSD
16 permitting program. These were discussed in
17 page's 30 and 31 of the Statement of Reasons.

18 In this regard, in October 2016,
19 US EPA proposed revisions to the PSD rules to
20 further address a court decision in Coalition for
21 Responsible Regulation, Incorporated versus
22 Environmental Protection Agency, numbers 90 --
23 9-1322, 10-073, 10-1092, 10-1167 in the DC circuit
24 court April 2015 as amended. Then this federal

1 register, this rulemaking, was contained in 81
2 Federal Register 68110, October 3rd, 2016. Refer
3 to the Statement of Reasons for all that stuff.

4 In this proposed rulemaking, US
5 EPA proposed changes to several definitions for
6 plantwide applicability limitations related to GHG
7 emissions and other provisions to ensure that a
8 source is not required to obtain a PSD permit
9 solely due to its potential to emit greenhouse
10 gases meeting the applicable threshold.

11 Finally, Section 204.660 would
12 include a significant emission rate for GHG's. In
13 this regard, the Illinois EPA is proposing
14 revisions in Part 204 that deal with GHG's that
15 are consistent with US EPA's proposed rules as
16 discussed in greater detail in the following
17 discussions in the Statement of Reasons. Section
18 204.430, Greenhouses Gases. It's in the Statement
19 of Reasons, page's 42 through 44. Section
20 204.490, Major Modification, Statement of Reasons
21 at page 46; Section 204.510, Major Stationary
22 Source, Statement of Reasons at page's 46 through
23 47; Section 204 .660, Significant, Statement of
24 Reasons, page's 62 through 64; Section 204.700,

1 Subject to Regulation, Statement of Reasons, page
2 66; and in Part 204 Subpart K Plantwide
3 Applicability Limitations, which was discussed in
4 Statement of Reasons page 79.

5 HEARING OFFICER RABCZAK: So these
6 are more stringent than the federal rules, but are
7 they more stringent than the court decisions?

8 MR. ROMAINE: They are different
9 than the current text of 40 CFR 52.21. They
10 reflect proposed changes to 52.21 by US EPA that
11 has not yet been finalized and obviously, I guess,
12 you know, US EPA's proposed rule changes would be
13 consistent with the court decisions.

14 HEARING OFFICER RABCZAK: Are they
15 additional, are they more stringent or are they
16 the same?

17 MR. ROMAINE: The court ruled that
18 the text of 52.21 was inappropriately restrictive.
19 They said that US EPA should not be applying the
20 PSD program, that sources were only subject to PSD
21 because of their emissions of greenhouse gases.

22 US EPA, in response to that
23 decision, has proceeded to remove provisions that
24 would have been overly stringent than 52.21. So,

1 yes, US EPA is acting to relax the text of 52.21
2 as directed to by the Supreme Court.

3 We are proceeding as US EPA has
4 proposed to proceed in a rulemaking that is not
5 yet finalized consistent with what the Supreme
6 Court generally instructed US EPA to do.

7 HEARING OFFICER RABCZAK: Am I
8 correct the answer to question 3(b) is no?

9 MR. ROMAINE: I think it all depends
10 on what you consider your starting point.

11 Do you consider the starting
12 point the text of the rule as written or do you
13 consider where we are in this ongoing transition
14 in response to the Supreme Court's decision?

15 MS. ZALEWSKI: The latter, what is
16 the answer to the latter?

17 MR. ROMAINE: No. To the latter,
18 no.

19 MS. ZALEWSKI: No, it's not more
20 stringent?

21 MR. ROMAINE: Not more stringent.

22 MS. ZALEWSKI: Okay.

23 HEARING OFFICER RABCZAK: And it's
24 the same as the decisions of the court?

1 MR. ROMAINE: That's correct.
2 That's what US EPA is trying to do and that's what
3 we're trying to do in Part 204.

4 HEARING OFFICER RABCZAK: Thank you.
5 Any questions?

6 MS. LIU: Good morning. I'm Alisa
7 Liu, the Board's Technical Unit. Question 4.

8 On page seven of the Statement
9 of Reasons, quote, the state's proposed Part 204
10 would be one in a series of permit programs
11 intended to track emissions to ensure that sources
12 are meeting their regulatory operations and to
13 maintain permits, end quote.

14 Question 4(a). Would you please
15 provide examples of other permit programs that
16 apply to sources subject to the proposed PSD
17 permit programs.

18 MR. SCHNEPP: This is Jason Schnepf.
19 As a general matter, there are only two basic
20 types of permits for stationary sources of
21 emissions in Illinois, construction or
22 pre-construction permits and operating permits.

23 Construction permits are to be
24 obtained prior to construction. They authorize

1 the construction of new stationary sources and
2 projects involving emission units at an existing
3 source. They also address the initial period of
4 operation of sources and projects. Operating
5 permits address the ongoing operation of
6 stationary sources. The operating permits for
7 stationary sources that are subject to PSD
8 permitting as well for other major sources are
9 issued under the Clean Air Act permit program or
10 CAAPP, C-A-A-P-P, as authorized by Section 39.5 of
11 the Environmental Protection Act.

12 The CAAPP is Illinois' operating
13 permit program for major stationary sources of
14 emissions pursuant to Title 5 of the Clean Air
15 Act. As related to the PSD permit program, CAAPP
16 permits carryover limitations and requirements
17 from the construction permit that were established
18 under the PSD permit program. CAAPP permits also
19 require sources to implement compliance procedures
20 as appropriate to ensure ongoing compliance with
21 substantive limitations and requirements
22 established under the PSD permit program.

23 Unlike construction permits,
24 CAAPP permits have fixed terms and must be

1 periodically renewed. While it is convenient to
2 refer to the PSD permit program and PSD permits
3 for proposed projects, it's important to
4 understand that PSD permitting in Illinois takes
5 place in the context of the general construction
6 permit program for sources of emissions. The
7 Illinois EPA, like many other state permitting
8 authorities, does not actually process standalone
9 applications for PSD permits. Rather, for a
10 proposed new stationary source or major
11 modification that is subject to PSD, the permit
12 applicant must submit a construction permit
13 application in which the applicable requirements
14 of the PSD permit are addressed along with other
15 area pollution control requirements that apply to
16 the project.

17 As a construction permit is
18 issued for the source or modification that
19 addresses applicable requirements of the PSD
20 permit program and provides approval under the PSD
21 program, the entire construction permit may
22 loosely be referred to as a PSD permit.

23 However, the PSD permit will
24 likely only be a portion of the construction

1 permit because the permit also addresses aspects
2 of the proposed project that are outside of the
3 PSD permit program. This may include requirements
4 for emissions of pollutants for which PSD is not
5 applicable, including requirements that are
6 applicable to the project under major stationary
7 sources, construction and modification at 35 Ill.
8 Adm. Code Part 203, which is Illinois' permit
9 program for Non-Attainment New Source Review or
10 NANSR.

11 HEARING OFFICER RABCZAK: I have a
12 quick clarifying question.

13 Would that be one decision of
14 the Agency granting multiple permits and would be
15 one document that will be -- for instance, if it's
16 appealed to the Agency, it's an appeal -- it might
17 be an appeal of multiple permits at the same time?
18 Just in speaking, how does it look?

19 MR. SCHNEPP: Logistically speaking,
20 it looks as one permit, one document.

21 MS. CARTER: In terms of the appeal
22 rights associated with that, if that's the
23 question you're asking, we can respond to that in
24 post-hearing comments.

1 HEARING OFFICER RABCZAK: What I
2 tried to understand is when the party receives a
3 decision of the Agency, PSD will be just one
4 element of a bigger decision that concerns other
5 permits, right?

6 MR. SCHNEPP: Other -- not other
7 permits, other features of the permit. Other --

8 HEARING OFFICER RABCZAK: PSD
9 permit --

10 MR. SCHNEPP: Other conditions of
11 the permit.

12 MS. LIU: So as you stated, the PSD
13 is not a standalone permit, they're rather
14 incorporated in the larger permit?

15 MR. SCHNEPP: That's right.

16 MS. CARTER: So do you have a
17 follow-up question, just so I'm clear, that we
18 need to answer in post-hearing comments pertaining
19 to this issue?

20 HEARING OFFICER RABCZAK: Yes, the
21 question about appeals. So when the IEPA issues a
22 decision and it contains PSD as well as other
23 permits --

24 MS. CARTER: Okay.

1 HEARING OFFICER RABCZAK: -- how do
2 you see the appeal process for that?

3 MS. CARTER: Thank you.

4 MS. LIU: Question 4(b). Since you
5 mentioned that the PSD is not a standalone permit,
6 but only a portion of a permit, would you please
7 clarify what are the other existing programs and
8 any overlapping requirements that apply to PSD
9 sources?

10 And, if so, would you please
11 comment on whether the Agency is planning to
12 eliminate any duplicative requirements under
13 various permit programs.

14 MR. SCHNEPP: The existing
15 construction permit programs, including the
16 Non-Attainment Area New Source Review permit
17 program and the PSD permit program as it is
18 currently implemented in Illinois, do not have
19 overlapping requirements. That is, they do not
20 duplicate requirements in a way that would allow
21 the issuance of a PSD permit for a major new
22 source or major modification in Illinois to
23 substitute for a construction permit or, as one is
24 required, a Non-Attainment Area New Source Review

1 permit. This is because these permit programs
2 address different aspects of a proposed new major
3 stationary source or major modification.

4 These programs are addressed in
5 a coordinated fashion with a single application
6 for a construction permit under 35 Ill. Adm. Code
7 201.142 Illinois' general requirement that a
8 person proposing a new source or a modification of
9 an existing source that is not otherwise exempted
10 pursuant to 35 Ill. Adm. Code 201.146 obtain a
11 construction permit from the Illinois EPA before
12 proceeding.

13 The construction permit programs
14 and CAAPP also do not have duplicative
15 requirements. While CAAPP permits carry over
16 limitations and requirements from construction
17 permits, the CAAPP is separate from
18 construction -- from the construction permit
19 program. CAAPP permits address the ongoing
20 operation of stationary sources, not the proposed
21 construction and modification of stationary
22 sources.

23 MS. LIU: Question -- go ahead.

24 MS. CARTER: Excuse me. Before we

1 go on to the next question, this question will be
2 responded to by Mr. Sprague in Springfield. I
3 don't know that he was sworn in when we previously
4 did that.

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

7 WHEREUPON:

8 JEFF SPRAGUE
9 called as a witness herein, having been first duly
10 sworn, deposeth and saith as follows:

11 MS. LIU: Good morning. Question 5.
12 At page 18 of the Statement of Reasons, the Agency
13 states an air quality analysis involves, quote,
14 assessing future ambient concentrations of a
15 pollutant in an area as a result of a proposed
16 project and comparing those concentrations to the
17 air quality standard or other reference level.

18 Would you please explain what
19 types of benchmarks are used as reference levels
20 if pollutants being assessed do not have air
21 quality standards?

22 MR. SPRAGUE: For human health
23 impacts, benchmarks include US EPA's acute
24 exposure guideline levels, the Agency for toxic

1 substances and disease registry's minimum risk
2 levels and, alternatively, occupational exposure
3 standards.

4 For ecological impacts,
5 benchmarks or screening concentration values for
6 air, surface water, soil, sediment and vegetation
7 obtained from US EPA publications or reference
8 documents and/or from the peer reviewed
9 literature.

10 MS. LIU: Thank you.

11 HEARING OFFICER RABCZAK: I have
12 another follow up to question 4.

13 MS. CARTER: Question 4?

14 HEARING OFFICER RABCZAK: Question
15 4.

16 Does the Agency have a form or
17 sample permit that would be used for PSD
18 permitting?

19 MS. CARTER: A form permit or are
20 you asking for --

21 HEARING OFFICER RABCZAK: A sample
22 permit.

23 MS. CARTER: We have issued -- I
24 can't testify.

1 MR. SCHNEPP: I would -- this is
2 Jason Schnepf. I wouldn't consider our permits to
3 be necessarily of a standardized form given the
4 varying types of industries that we regulate. On
5 our website, we do have a listing of permits -- of
6 PSD permits issued. I forget what the date was
7 that we started putting those on our website, but
8 certainly the last several years we have a list of
9 all PSD permits that were issued. So, in that
10 regard, you can see what the varying types of PSD
11 permits would look like.

12 HEARING OFFICER RABCZAK: And you
13 will continue using the similar type of language
14 in PSD permits?

15 MR. SCHNEPP: Right. The -- I guess
16 the PSD permits under the proposed rule would not
17 substantively change. Obviously, the underlying
18 regulations, citations, would change, but,
19 otherwise, we would not expect the change in the
20 permit.

21 HEARING OFFICER RABCZAK: Thank you.

22 MR. ROMAINE: Are you simply asking
23 could you give us an example of a recent PSD
24 permit?

1 HEARING OFFICER RABCZAK: I'm asking
2 about how they would look like under the new
3 program.

4 Would they be different from
5 what you have been issuing so far?

6 MR. SCHNEPP: I think the answer to
7 that is, no, they would not look different than
8 what they look like today other than the
9 citations -- the underlying citations.

10 HEARING OFFICER RABCZAK: Could you
11 please include in your post-hearing comments a
12 couple of examples of what you issued under the
13 PSD program for the record?

14 MS. CARTER: Yes, we can do that.

15 MR. ROMAINE: I assume you want
16 simple, straightforward examples. I say that
17 because PSD permits vary in the complexity given
18 the number of emission units involved, special
19 circumstances. We will come forward with some
20 simple, straightforward. We're proposing to build
21 a new piece of equipment. Here is our PSD permit
22 for it.

23 HEARING OFFICER RABCZAK: Have you
24 categorized them and have different types as you

1 mentioned?

2 MR. ROMAINE: No.

3 HEARING OFFICER RABCZAK: Something
4 representative --

5 MS. CARTER: So would you like a
6 simple and more complex?

7 HEARING OFFICER RABCZAK: Yes, that
8 would be helpful.

9 MR. ROMAINE: Okay.

10 HEARING OFFICER RABCZAK: The reason
11 for that is it would be helpful to see what it
12 would look like in terms of the language in the
13 permit. So if there is any questions, any
14 comments from participants in the proceeding, they
15 can be addressed before they come to us for
16 appeals. Thank you. Brenda?

17 MS. BRENDA CARTER: I was just going
18 to make a suggestion -- this is Brenda Carter. I
19 was just going to make a suggestion that maybe a
20 whole sample doesn't have to be included, but
21 maybe the link to the website or maybe a major
22 mod, an example of a major modification PSD
23 permit, and maybe one for an actual source.

24 MS. CARTER: We can do that.

1 MR. ROMAINE: I think it would be
2 just as simple for us to select two permits to be
3 officially in the record for this proceeding
4 rather than referring the Board to a website.

5 HEARING OFFICER RABCZAK: Yeah, I
6 would rather have it in the record because it's
7 more convenient to whoever is working with the
8 docket and change -- the changes to the website
9 change the links. So it would be more convenient
10 to have a document in the record and I like the
11 suggestions that -- to have something representing
12 the major mod versus a new source.

13 MS. CARTER: Okay. So just to be
14 clear on what Ms. Carter said, you would like one
15 as well for a new source and a major modification
16 as well?

17 HEARING OFFICER RABCZAK: Yes.

18 MS. BRENDA CARTER: Yes.

19 HEARING OFFICER RABCZAK: To file
20 rather than have a link. Thank you.

21 MS. CARTER: Are there going to be
22 any more follow-up questions on the air quality
23 component? The only reason I'm asking is if I
24 could let Mr. Sprague go. We can bring him back

1 if need be, but from the Agency's perspective, and
2 we can be mistaken on this, we didn't see any
3 others that would fall within his expertise, but I
4 would defer to you on that.

5 HEARING OFFICER RABCZAK: So you
6 would suggest question 5 is within his expertise?

7 MS. CARTER: Yes.

8 HEARING OFFICER RABCZAK: Does
9 anybody have a follow-up question to question 5?
10 I don't see anybody. So if the Agency can
11 bring --

12 MS. CARTER: We can bring him back,
13 if need be. So if Ms. Vetterhoffer --

14 HEARING OFFICER RABCZAK: Would you
15 like to go off the record for five minutes?

16 MS. CARTER: Let's do that.

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

20 HEARING OFFICER RABCZAK: We are
21 back on the record and we will continue with
22 question 6.

23 In Section 101.202, IEPA
24 proposes deleting the definition of participant in

1 a CAAPP common process. Please comment whether
2 IEPA has also proposed deleting all references to
3 that term in other parts of the Board rules, if
4 any.

5 MS. CARTER: The Agency will respond
6 to this in post-hearing comments.

7 HEARING OFFICER RABCZAK: For the
8 sake of the record and court reporter, we would
9 like to ask everybody to slow down a little bit.
10 That includes me probably.

11 Question 7. In Section 101.201,
12 IEPA adds a definition for both Agency record and
13 OSFM record.

14 Question 7(a). Please explain
15 why IEPA believes these definitions are necessary?

16 MS. CARTER: The Agency will respond
17 to this in post-hearing comments.

18 HEARING OFFICER RABCZAK: Thank you.
19 Question 7(b). Please also comment on whether
20 IEPA contacted OSFM for its position on adding
21 this definition and, if so, please provide OSFM's
22 position.

23 MS. CARTER: The Illinois EPA will
24 respond to this in post-hearing comments.

1 HEARING OFFICER RABCZAK: Question
2 7(c). Further, please comment how these proposed
3 definitions are related to the PSD requirements.

4 MS. CARTER: The Illinois EPA will
5 respond to this in post-hearing comments.

6 MS. PAMENTER: Excuse me. May I ask
7 a follow-up question?

8 HEARING OFFICER RABCZAK: Yes.

9 MS. PAMENTER: Kathryn Pamenter,
10 P-A-M-E-N-T-E-R. The definition of Agency record
11 provide -- means a record of final Agency decision
12 as kept by the Agency of those documents required
13 by the state agency record meeting the applicable
14 requirements of 35 Ill. Adm. Code Part 105.

15 Can you clarify if there is a
16 state agency record requiring a record of final
17 Agency decision or whether that second word record
18 should be deleted?

19 MS. CARTER: Okay. We will respond
20 to that in post-hearing comments.

21 HEARING OFFICER RABCZAK: I just
22 want to clarify that Ms. Pamenter is from the AG's
23 office.

24 MS. PAMENTER: Yes, that's correct.

1 HEARING OFFICER RABCZAK: Do you
2 have another follow-up question?

3 MS. PAMENTER: I do not. Thank you.

4 HEARING OFFICER RABCZAK: Question
5 8. Please confirm that Section 101.302(e)(3)
6 includes the Agency's PSD permit decisions under
7 new proposed Part 204 as required by 415 ILCS
8 5/4-40.3(c).

9 MS. CARTER: The Agency will respond
10 to this in post-hearing comments.

11 HEARING OFFICER RABCZAK: Question
12 9. In Section 101.610, IEPA proposes amending,
13 quote, any required record or recommendation, end
14 quote, to, quote, any required Agency record, OSFM
15 record, local siting authority record or
16 recommendation, end quote. Please explain why
17 IEPA believes this revision is necessary.

18 MS. CARTER: The Agency will respond
19 to this in post-hearing comments.

20 MS. PAMENTER: Excuse me.

21 HEARING OFFICER RABCZAK: Go ahead.

22 MS. PAMENTER: This is Kathryn
23 Pamenter with just a follow-up comment on 101 -- I
24 apologize. I thought we were on 601. Excuse me.

1 I apologize. 101.610.

2 HEARING OFFICER RABCZAK: 6.0.

3 MR. KLEIN: 610.

4 MR. SCHNEPP: 610.

5 HEARING OFFICER RABCZAK: 610.

6 MS. PAMENTER: Subsection F, as in
7 Frank, provides "Determine that a witness is
8 adverse, hostile or unwilling under Section
9 101.624." We wanted to get clarification on
10 whether any additional language after the word
11 "unwilling" should be included? It's on page 23.

12 MS. CARTER: I'm just looking at
13 101. The Agency will respond to that in
14 post-hearing comments.

15 HEARING OFFICER RABCZAK: We are now
16 proceeding to Part 105. Does anybody else have
17 any other questions on Part 101?

18 Question 10. In the table of
19 contents, IEPA added "The" before "Agency."
20 Please comment why.

21 MS. CARTER: The Agency will respond
22 to this in post-hearing comments.

23 HEARING OFFICER RABCZAK: Question
24 11. In Section's 105.116 and 105.118, IEPA

1 proposes to change to state -- quote, state
2 agency, end quote, to, quote, Agency, end quote,
3 or, quote, OSFM, end quote. Please explain why
4 this change is necessary.

5 MS. CARTER: The Agency will respond
6 to this in post-hearing comments.

7 HEARING OFFICER RABCZAK: Thank you.
8 Question 12. In Section's 105.2112 -- 212 --
9 105.212(a) and (b), Section 105.410(a), Section
10 105.412 and Section 105.612, IEPA proposes adding
11 "Agency" before record. A similar change is
12 proposed in Section 105.508(b) where, quote, OSFM,
13 end quote, is added before record. Please comment
14 why IEPA proposes these amendments.

15 MS. CARTER: The Agency will be
16 responding to this in post-hearing comments.

17 HEARING OFFICER RABCZAK: Thank you.
18 Question 13. IEPA's amendments to Section
19 105.608(a)(4) require a petition to include,
20 quote, the issues proposed for review citing to a
21 specific permit term or condition where applicable
22 and to the Agency record where those issues were
23 raised with reasonable specificity during the
24 public comment period, end quote.

1 They also require attaching the
2 cited public comment to the petition. Please
3 explain.

4 Question 13(a). Does the
5 proposed language limit the statutory language of
6 415 ILCS 5/40.3(a)(2) -- (a)(2)(ii) that only
7 requires, quote, citing to the record where those
8 issues were raised, end quote?

9 MS. CARTER: The Agency will respond
10 to this in the post-hearing record.

11 HEARING OFFICER RABCZAK: Question
12 13(b). What does IEPA consider to be a reasonable
13 specificity? Please provide examples.

14 MS. CARTER: Again, the Agency will
15 respond in post-hearing comments.

16 HEARING OFFICER RABCZAK: Question
17 13(c). Is it possible that some part of the
18 Agency record related to a PSD permit could be
19 beyond public comment period? Are there instances
20 when a document in the record was not produced
21 during a public comment period? Would the issues
22 raised in the permit application itself or during
23 correspondence with the Agency be considered,
24 quote, during the public comment period, end

1 quote?

2 MS. CARTER: The Agency will respond
3 in post-hearing comments.

4 HEARING OFFICER RABCZAK: Thank you.
5 Question 13(d). If a petitioner does not have a
6 copy of a -- of the record when filing a petition,
7 would the failure to attach a cited public comment
8 to the petition preclude the petitioner from
9 filing a petition?

10 MS. CARTER: The Agency will respond
11 in post-hearing comments.

12 HEARING OFFICER RABCZAK: Thank you.
13 Question 13(e). Would the following revision of
14 Section 105.608 be acceptable to IEPA?

15 MS. CARTER: The Agency will respond
16 in post-hearing comments.

17 HEARING OFFICER RABCZAK: Question
18 14. It's page six. In Section 105.610(b), please
19 comment if it is appropriate to delete the
20 sentence starting, quote, the party requesting the
21 stay has the burden, end quote, because this
22 requirement is already included in Section
23 105.608(e) immediately above.

24 MS. CARTER: The Agency will respond

1 in post-hearing comments.

2 HEARING OFFICER RABCZAK: Thank you.
3 Question 15. In Section 105.614, please explain
4 why you mean -- what you mean, sorry, by, quote,
5 technical decisions contained therein reflect
6 considered judgment by the Agency, end quote.

7 MS. CARTER: Excuse me. The Agency
8 will respond to that in post-hearing comments.

9 HEARING OFFICER RABCZAK: Okay.
10 Thank you. Question 16. In Section 105.614(a),
11 please comment on why IEPA states that the Board
12 will not hold a hearing if summary judgment is
13 granted considering that granting summary judgment
14 by definition means that no hearing will be held.

15 Please explain why this
16 explanation is necessary here while it is not
17 included in any other relevant part of the code
18 addressing the hearings.

19 MS. CARTER: The Agency will respond
20 in post-hearing comments.

21 HEARING OFFICER RABCZAK: Thank you.
22 Does anybody else have questions to Part 105?
23 Part 204 Subpart A.

24 MS. LIU: Question 17. Section

1 204.100 lists federal provisions incorporated by
2 reference.

3 Could you please clarify whether
4 all federal regulations incorporated by reference
5 are cited in the proposed rule text?

6 MS. CARTER: The Agency will respond
7 in post-hearing comments.

8 MS. LIU: As you do, would you
9 please point to the proposed rule language for
10 each of them that incorporates the provision?
11 Would you please add language in the rule text to
12 indicate that the cite in federal rules are
13 incorporated by reference in Section 204.100 to
14 reflect the incorporation?

15 MS. CARTER: The Agency will address
16 this question in post-hearing comments.

17 MS. LIU: 17(b). Would you also
18 please include citations to the federal rules
19 proposed to be incorporated by reference in the
20 appropriate sections of the proposed rules?

21 MS. CARTER: The Agency will address
22 this question in post-hearing comments.

23 HEARING OFFICER RABCZAK: Question
24 18. Subsection's HH, II and XX are indicated as

1 reserved.

2 Please explain why this is
3 necessary considering that it is not the Board's
4 practice to reserve numbering in this manner.

5 MS. CARTER: The Agency will respond
6 in post-hearing comments.

7 HEARING OFFICER RABCZAK: In Section
8 204.110, the list of abbreviations includes
9 Illinois IEPA -- Illinois EPA. Please comment on
10 whether it is appropriate to replace it here and
11 throughout the rest of Part 204 with Agency to be
12 consistent with the rest of the language of the
13 Board's rules when referring to IEPA.

14 MS. CARTER: The Agency will respond
15 in post-hearing comments.

16 HEARING OFFICER RABCZAK: Thank you.
17 Subpart B.

18 MS. ZALEWSKI: Good morning. Carrie
19 Zalewski, Board member. I'm the Board member
20 assigned with Chairman Papadimitriu to draft this
21 case. So we appreciate your attendance,
22 especially traveling to Chicago because that makes
23 our life easier. So I'll be reading the next
24 couple of questions.

1 Question 20. In Section
2 204.220, please explain whether the definition of,
3 quote, adverse impact on visibility, end quote, is
4 modeled on any act or regulation. Please also
5 comment whether, quote, federal Class 1 area, end
6 quote, needs to be defined or include a citation
7 to a specific federal regulation that address
8 federal Class 1 areas.

9 MR. ROMAINE: The definition of,
10 quote, adverse impact on visibility, unquote, in
11 Section 204.220 is modeled after the definition of
12 the same in 40 CFR 52.21(b)(29). A separate
13 definition of, quote, federal Class 1 area,
14 unquote, is not necessary. Section 204.920(a)
15 identifies these areas.

16 It provides that, quote, all of
17 the following areas which were in existence on
18 August 7th, 1977, shall be Class 1 areas and may
19 not be redesignated; one, international parks;
20 two, national wilderness areas that exceed 5,000
21 acres in size; three, national memorial parks that
22 exceed 5,000 acres in size; and, four, national
23 parks which exceed 6,000 acres in size.

24 This language mirrors the

1 language in 40 CFR 52.21(e) (1) and is consistent
2 with the approach to identification of federal
3 Class 1 areas in 40 CFR 52.21. However, the
4 further scrutiny of Section 204.920 triggered by
5 this question has revealed a flaw in this section.
6 As proposed, Section's 204.920(b) and (c) would
7 provide that, quote -- provide that certain areas,
8 quote, may be redesignated as provided for in this
9 part. And I'm emphasizing the phrase as provided
10 for in this part.

11 This language is based on the
12 language of 40 CFR 52.21(e) (2) and (3) as well as
13 40 CFR 51.166(e) (2) and (3) and is appropriate as
14 applied to redesignation of areas within Illinois.
15 However, this language does not contemplate or
16 accommodate the redesignation of areas that may
17 take place in other states by those states
18 under --

19 MR. SCHNEPP: Including.

20 MR. ROMAINE: -- including the
21 states neighboring Illinois. Those designations
22 would not be made by those states under Part 204
23 but under the provisions of their own US EPA
24 approved state PSD programs.

1 While Section 204.920 would not
2 restrict any states from redesignating areas under
3 their PSD programs, it would preclude reliance on
4 those new designations of areas for purposes of
5 Part 204. This would not be appropriate because
6 it means that Part 204 would not properly serve to
7 prevent significant deterioration of air quality
8 in any state designated Class 1 areas outside of
9 Illinois due to new major stationary sources or
10 major modifications in Illinois.

11 There are potentially several
12 ways that this could be addressed, for example,
13 Part 204 --

14 HEARING OFFICER RABCZAK: Sorry.
15 Could you please slow down a bit.

16 MR. ROMAINE: Sorry. For example,
17 Part 204 could refer to the applicable state SIP's
18 to identify areas outside of Illinois that have
19 been redesignated under the PSD program. Those
20 SIP's would identify the US EPA approved state
21 redesignations of areas that are relevant to PSD
22 permitting both in the states in which the areas
23 are located and in Illinois pursuant to Part 204.

24 The Illinois EPA will be

1 reconsidering -- or considering possible ways to
2 revise Part 204 to address this issue and will be
3 submitting a recommended approach in its written
4 comments to the Board.

5 HEARING OFFICER RABCZAK: Okay. Any
6 follow-up questions?

7 MS. ZALEWSKI: Twenty-one. In
8 Section 204.230(c), please explain what you mean
9 by, quote, including those with a future
10 compliance date, end quote.

11 MR. SCHNEPP: This is Jason Schnepf.
12 The proposed definition of allowable -- quote,
13 allowable emissions in Section 204.230 is modeled
14 after the definition of the same in 40 CFR
15 52.21(b)(16). In its entirety, the clause that is
16 the subject of this comment is, quote, the
17 applicable SIP emissions limitation including
18 those with a future compliance date, end quote.

19 When evaluating the net change
20 in emissions from a proposed project, the role of
21 the subject phrase is to prevent a source from
22 inappropriately determining contemporaneous
23 decreases in emissions from current levels of
24 emissions that are higher than relied upon in the

1 applicable SIP. This role is most-readily
2 illustrated by an example.

3 Assume that a source has an
4 emission unit that currently emits ten pounds of a
5 pollutant per hour. A new rule that limits
6 emissions to two pounds per hour has been adopted
7 by the state and approved as part of its SIP. The
8 new rule has a future compliance date providing
9 subject sources with up to two years to install
10 additional emission control equipment or make
11 other changes to meet the new lower emission
12 standard.

13 When evaluating the net change
14 in emissions from a proposed project to show that
15 the project is not a major modification, the
16 source may not receive credit for the decrease in
17 emissions of this emissions unit that is required
18 by this new rule. Subject to other applicable
19 requirements for an evaluation of the net change
20 in emissions from a proposed project, the source
21 could receive credit for a decrease in emissions
22 from this unit only to the extent that future
23 emissions will be less than two pounds per hour.

24 HEARING OFFICER RABCZAK: Thank you.

1 MS. ZALEWSKI: Twenty-two. In
2 Section 204.250(b)(2), please clarify whether the
3 phrase, quote, constructed in the state, end
4 paren -- end quote refers to construction in
5 Illinois.

6 If not, please explain how this
7 provision would apply to any construction in
8 another state.

9 MR. ROMAINE: In the context of Part
10 204, the phrase, quote, constructed in the state,
11 unquote, in Section 204.250(b)(2) refers to a
12 major stationary source or major modification
13 constructed in the State of Illinois. However,
14 this wording reflects general language in 40 CFR
15 51.166 and 52.21 that generally addresses the size
16 emphasis of areas in which designations of
17 attainment and non-attainment status may be made.

18 MS. ZALEWSKI: Twenty-three. In
19 Section 204.290, please comment on whether the
20 publication, quote, Standard Industrial
21 Classification Manual, 1972, as amended by the
22 1977 Supplement (US Government Printing Office
23 stock numbers 4101-0066 and 003-005-00176-0
24 respectively) must be incorporated by reference in

1 Section 204.100. If so, please provide a copy for
2 incorporation.

3 MR. ROMAINE: The Illinois EPA
4 agrees that this publication should be
5 incorporated by reference in Section 204.100. The
6 Illinois EPA is working to locate a copy of this
7 publication for the Board to support its
8 incorporation by reference in Part 204.

9 MS. ZALEWSKI: Twenty-four. In
10 Section 204.300, please clarify what constitutes
11 a, quote, significant reduction, end quote, when
12 it comes to the application of clean coal
13 technology. Please provide examples. Would it be
14 possible to specify a percent reduction in air
15 emissions to quantify as, quote, significant
16 reductions?

17 MR. ROMAINE: As a practical matter,
18 the clarification that is requested for the
19 definition of clean coal technology in Section
20 204.300 is not necessary. This is because the
21 provisions in Part 204 that use this term
22 reasonably circumscribe its meaning. In this
23 regard, this term is only directly used in Part
24 204 and three other definitions. Clean coal

1 technology demonstration project Section 204.310;
2 temporary clean coal technology demonstration
3 project Section 204.710; and re-powering Section
4 204.630.

5 Among other things, the
6 definition of clean coal technology demonstration
7 project provides that such projects must use funds
8 appropriated by the Department of Energy or US EPA
9 with the federal funds being at least 20 percent
10 of the total project cost. This provides
11 objective criteria for the meaning of clean coal
12 technology in the context of both clean coal
13 technology demonstration project and temporary
14 clean coal technology demonstration project.

15 To qualify as a clean coal
16 technology demonstration project, either the US
17 Department of Energy or US EPA must find that the
18 potential benefits of a planned project are worthy
19 of substantial federal funding. In other words,
20 the US Department of Energy and US EPA through
21 their official actions identify any planned
22 projects in Illinois that would qualify as use of
23 clean coal technology.

24 The definition of re-powering

1 also circumscribes the meaning of clean coal
2 technology in this context. As related to
3 re-powering, clean coal technology means
4 replacement of an existing coal-fired boiler with
5 one of a number of list technologies, that is
6 atmospheric or pressurized polluted combustion,
7 integrated gasification combined cycle,
8 magnetohydrodynamics,
9 M-A-G-N-E-T-O-H-Y-D-R-O-D-Y-N-A-M-I-C-S, then
10 continuing, direct and indirect coal-fired
11 turbans, integrated gasification fuel cells.

12 Clean coal technology would also
13 include other technologies as determined again by
14 the administrator of US EPA in consultation with
15 the US Department of Energy. Accordingly, if a
16 planned coal-fired boiler replacement project in
17 Illinois would not involve a conversion to one of
18 the listed technologies, the US EPA would
19 determine whether the plan technologies would
20 constitute use of clean coal technology.

21 The relevant criteria for US EPA
22 to make this determination would be whether the
23 plan technologies, quote, are capable of
24 controlling multiple combustion emissions

1 simultaneously with improved boiler or generation
2 efficiency and with significantly greater waste
3 reduction relative to the performance of
4 technology and widespread commercial use as of
5 November 15th, 1990, end quote.

6 It should be emphasized that the
7 definition of clean coal technology in 40 CFR
8 52.21(b)(34) as well as in 40 CFR 51.166(b)(3)
9 which are restated in Section 204.300 --
10 apparently it was (b)(33) -- both include the
11 phrase significant reductions in air emissions.
12 As such, any changes to the wording of Section
13 204.300 that attempt to clarify this phrase would
14 only be approved by US EPA as part of a SIP
15 revision for a state PSD program for Illinois, can
16 be shown that the result is more stringent or at
17 least as stringent as the federal definition.

18 In this regard, 40 CFR 51.166(b)
19 provides -- I'm quoting -- definition all state
20 plans shall use the following definitions for the
21 purposes of this section. Deviations from the
22 following wording will be approved only if the
23 state specifically demonstrates that the submitted
24 definition is more stringent, or at least as

1 stringent, in all respects as the corresponding
2 definitions below.

3 HEARING OFFICER RABCZAK: Okay.

4 MS. ZALEWSKI: Twenty-five. In
5 Section 204.550(e)(2) the term, quote,
6 enforceable, end quote, is used without any
7 qualifier like, quote, legally, end quote, or
8 practicably, end quote, as used in Section
9 204.560. Please explain the proposed intent of
10 the different types of enforcement, i.e., quote,
11 legally enforceable, end quote, or practicably
12 enforceable, end quote, or just, quote, unquote,
13 enforceable in Section 204.550(e)(2) and 204.560.

14 MS. CARTER: The Agency will respond
15 to this question in post-hearing comments.

16 MS. ZALEWSKI: Twenty-six. In
17 Section 204.560, would it be acceptable if the
18 phrase, quote, by a state or local air pollution
19 control agency, end quote, is replaced by the,
20 quote, unquote, Agency?

21 MR. ROMAINE: In Section 204.560,
22 the phrase, quote, by the Agency, unquote, should
23 not be substituted for the phrase "by a state or
24 local air pollution control agency." The current

1 phrase is consistent with relevant US EPA guidance
2 (see Release of Interim Policy on Federal
3 Enforceability of Limitations on Potential to
4 Emit.) It's a memorandum from John Seitz,
5 Director of Office of Air Quality Planning and
6 Standards, to regional offices addressees dated
7 January 22, 1996.

8 And the relevant statement in
9 this document is, quote, the term federally
10 enforceable should now be read to mean federally
11 enforceable or legally and practicably enforceable
12 by a state or local air pollution control agency,
13 end quote. This is further discussed in the
14 Statement of Reasons referred to in page's 53 and
15 54.

16 MS. ZALEWSKI: Do you believe that
17 the state or local air pollution control agency is
18 the Agency?

19 MR. ROMAINE: No. I'm sorry. The
20 state is certainly the state air pollution control
21 agency, but we are not the local air pollution
22 control agency.

23 HEARING OFFICER RABCZAK: Do you
24 have any examples who that would be?

1 MR. ROMAINÉ: I believe the City of
2 Chicago enforces air pollution control
3 regulations.

4 MS. ZALEWSKI: But they wouldn't
5 enforce this type of permit?

6 MR. ROMAINÉ: No, but the question
7 that is being addressed here is whether
8 limitations imposed by the local air pollution
9 control agency could restrict the potential
10 emissions in a way that could be relied on for
11 purposes of Part 204.

12 MS. ZALEWSKI: Thank you for the
13 clarification.

14 Twenty-seven. Section 204.570,
15 please add -- please add a citation for the
16 italicized text. Please also remove italics from
17 the portion of the text that is added by EPA and
18 is not based on statutory authority. It's not
19 really a question there. I don't know if you want
20 to respond.

21 MS. CARTER: The Agency will respond
22 to this in post-hearing comments.

23 MS. ZALEWSKI: Okay. Number 28.
24 The definition of, quote, major modification, end

1 quote, under Section 204.490 applies to
2 significant emissions increase of a, quote,
3 regulated NSR pollutant (as defined in Section
4 204.610) other than GHG's and then (as defined in
5 Section 204.430)".

6 Please clarify whether the
7 definition of, quote, regulated NSR pollutant, end
8 quote, under Section 204.610 includes GHG's. If
9 so, under what subsection are they covered in
10 Section 204.210?

11 MR. SCHNEPP: This is Jason Schnepf.
12 The definition of regulated NSR pollutant in
13 Section 204.610 includes GHG's. GHG's are a
14 regulated NSR pollutant pursuant to Section
15 204.610(d) as GHG's are a pollutant that is
16 otherwise subject to regulation as that term is
17 defined in Section 204.700.

18 In this regard, Section 204.700
19 specifically states that pollutants subject to
20 regulation include, but are not limited to, GHG's
21 as defined in Section 204.430. As GHG's are a
22 regulated pollutant, emissions of GHG's would, in
23 the appropriate circumstances, be addressed by all
24 the subsections in Section 204.210, which defines

1 the term actual emissions.

2 Incidentally, as observed by
3 this question, GHG emissions are not considered
4 when determining whether a proposed project would
5 be a major modification. This determination and
6 the determination whether a proposed new source is
7 a major source would be made based on the
8 emissions of regulated NSR pollutants other than
9 GHG's from the proposed modification or new
10 source.

11 However, if a proposed -- if a
12 proposed modification or a new source would be
13 major under the PSD permit program for emissions
14 of a regulated NSR pollutant other than GHG's, it
15 may also be subject to PSD for its emissions of
16 GHG's. For example, for a new major source
17 Section 204.1100(b) which addresses the PSD
18 requirement for Best Available Control Technology,
19 or BACT, B-A-C-T, provides that, quote, a new
20 major source shall apply BACT for each regulated
21 NSR pollutant that it would have the potential to
22 emit insignificant amounts, end quote.

23 As such, once a proposed new
24 source is major or a regulated NSR pollutant,

1 other than GHG's, the BACT requirement also
2 applies to the source for other regulated NSR
3 pollutants for which the sources emissions are
4 significant. This would include the source's
5 emissions of GHG's if its potential GHG emissions
6 were significant, 7,500 tons or more per year as
7 carbon dioxide equivalents. 75,000 tons or more
8 per year.

9 MS. ZALEWSKI: Twenty-nine. In
10 Section 204.660, please explain why some
11 pollutants rates are listed in tpy and for others
12 in megagrams per year. Comment on whether all
13 rates can be listed in tpy.

14 MR. SCHNEPP: As observed by this
15 question, the significant emission rates for
16 certain pollutants are expressed in megagrams per
17 year with, quote, equivalent, end quote, emission
18 rates in parenthesis that are expressed in tons
19 per year. This is because this is the form in
20 which the US EPA adopted significant emission
21 rates for these pollutants under the PSD program.
22 For these pollutants, it would be problematic to
23 only express the significant emission rates in
24 tons per year. This is because the emission rates

1 in megagrams per year and tons per year are
2 actually slightly different.

3 For example, for municipal solid
4 waste landfill emissions, the significant emission
5 rate of 45 megagrams per year is actually
6 equivalent to 49.60 tons per year, not 50 tons per
7 year as indicated in parenthesis in 40 CFR
8 52.21(b)(i). On the other hand, for municipal
9 waste combustor metals, the significant emission
10 rate of 14 megagrams is actually equivalent to
11 15.43 tons per year, not 15 tons per year. Simply
12 setting significant emission rates for these
13 pollutants at the values in tons per year would
14 affect the stringency of Part 204 compared to 40
15 CFR 52.21(b)(23)(i).

16 HEARING OFFICER RABCZAK: Any
17 follow-up questions before we continue?
18 Continuing to Subpart E.

19 MR. KLEIN: Martine Klein speaking.
20 Question 30. Please clarify whether Subsection
21 204.1000(a) requires that the degree of emission
22 limitation must not be affected by stack height of
23 any source exceeding good engineering practice
24 under Section 204.420. If so, please provide

1 amended rule language under Section 204.1000 to
2 reflect the proposed intent.

3 MR. ROMAINE: As generally indicated
4 in this question, Section 204.1000(a) would
5 require the degree of emission limitation required
6 for control of pollutants under Part 204 must not
7 be affected by stack height of any source as
8 exceeds, quote, good engineering practice, end
9 quote. The term good engineering practice is
10 defined in Section 204.420. This term is not used
11 elsewhere in Part 204 with a meaning other than
12 the one provided in Section 204.420. As such, it
13 is unclear what clarification is being suggested
14 by the Board.

15 HEARING OFFICER RABCZAK: We'll get
16 back to that when we get our senior scientist
17 back. If we will have questions on that later,
18 the Board will just add it as the Board's
19 questions for the record. Thank you.

20 Does anybody have a question to
21 Subpart E? We will continue to Subpart F.

22 MS. LIU: Subpart F. Requirements
23 for major stationary sources and modifications.
24 Question 31.

1 Could you please comment on
2 whether the term, quote, significant amounts, end
3 quote, in Section 204.1100(b) needs to be followed
4 by the phrase, quote, as defined in Section
5 204.660, end quote.

6 MR. SCHNEPP: This is Jason Schnepf.
7 The addition of the suggested phrase would seem
8 acceptable, however, the Illinois EPA is not
9 prepared at this time to agree to the suggested
10 change.

11 MS. LIU: Is that something you will
12 respond to in post-hearing comments?

13 MS. CARTER: We will -- we will
14 further address that question in post-hearing
15 comments.

16 MS. LIU: Question 32. In Section
17 204.1110(a), please explain what, quote, air
18 quality control region, end quote, means. Please
19 comment on whether that term needs to be defined
20 under Subpart B of Part 204.

21 MS. CARTER: The Illinois EPA will
22 respond to this in post-hearing comments.

23 MS. LIU: Question 33. In
24 Subsection 204.1110(b), does, quote, maximum

1 allowable increase, end quote, refer to the levels
2 set forth at Section's 204.900 or 204.1200? If
3 so, would it be appropriate to include a cross
4 reference to those sections in Subsection B?

5 MR. ROMAINE: The addition of the
6 suggested cross references would appear to be
7 appropriate. However, the Illinois EPA is not
8 prepared at this time to agree to the suggested
9 changes. We will address it in post-hearing
10 comments.

11 MS. LIU: Thank you.

12 HEARING OFFICER RABCZAK: We are at
13 12:00. I was wondering to speed up the process if
14 there is more questions that you would like to
15 address in post-hearing comment, if we could
16 indicate those and just skip them, would that be
17 appropriate?

18 MS. CARTER: That is fine. Would
19 you like me to indicate those by Pollution Control
20 Board question number and I can do that?

21 HEARING OFFICER RABCZAK: Give me a
22 second. Does anybody have an objection?

23 MR. GRABLE: Are we allowed to ask
24 follow-up questions if they're going to respond in

1 post-hearing comments?

2 HEARING OFFICER RABCZAK: Yes.

3 MS. CARTER: Would you like me to
4 indicate those questions at this time?

5 HEARING OFFICER RABCZAK: Would that
6 be more appropriate if we actually went through
7 all the questions right now rather than skipping
8 them?

9 MS. ZALEWSKI: We only have --

10 HEARING OFFICER RABCZAK: We don't
11 have much, but if we can continue until 1:00
12 without a break and maybe be done, would that be
13 okay?

14 MS. ZALEWSKI: I only have three
15 full pages. I think we can -- we can do them
16 quickly.

17 HEARING OFFICER RABCZAK: Let's
18 continue maybe until we finish and then we will
19 conclude without stopping for a lunch break if
20 that's okay.

21 MS. CARTER: That is -- that is
22 fine.

23 HEARING OFFICER RABCZAK: We will
24 just go through questions one by one.

1 MS. ZALEWSKI: With clarity.

2 HEARING OFFICER RABCZAK: We resume
3 with Subpart H.

4 MS. LIU: Subpart H. Obligations of
5 EPA. Question number 34. Section 204.1330
6 requires IEPA to issue or deny a permit within one
7 year after receipt of a complete application.

8 Question 34(a). Please clarify
9 whether IEPA will issue a notification to the
10 applicant indicating the date on which IEPA
11 determined the application to be complete.

12 MR. ROMAINE: This is Jason Schnepf.
13 Section 204.1300 Notification of Application
14 Completeness to Applicants requires the Illinois
15 EPA to notify the applicant within 30 days of
16 receipt of an application for a permit pursuant to
17 Part 204 as to the completeness of or deficiency
18 in the application.

19 MS. LIU: 34B. Please comment on
20 whether Section 204.1300 should require a complete
21 application notification that starts the one year
22 clock.

23 MR. SCHNEPP: Section 204.1300,
24 Notification of Application Completeness to

1 Applicants already requires the Illinois EPA to
2 notify the applicant within 30 days of receipt of
3 an application for a permit pursuant to Part 204
4 as to the completeness of or deficiency in the
5 application.

6 HEARING OFFICER RABCZAK: So would
7 IEPA consider that -- the date of notice, the date
8 on the notice, to be the start of the one year
9 period?

10 MS. CARTER: We will respond to that
11 in post-hearing comments.

12 MS. LIU: 34C. Also comment on
13 whether the applicant has any recourse if the
14 Agency does not take any action within a year
15 after the receipt of the complete application.

16 MR. SCHNEPP: The Illinois EPA is
17 proposing the addition of Section 105.604(b) to
18 address the appeal rights of the applicant to the
19 Board if the Illinois EPA fails to act on an
20 application for a PSD permit within one year of
21 submittal of a complete PSD application.

22 HEARING OFFICER RABCZAK: That would
23 be a new section, right?

24 MS. CARTER: 105.604(b) was the

1 response.

2 MR. SCHNEPP: 105.604 is a new
3 section. That is a proposed section.

4 MR. KLEIN: So it would be four
5 subsections instead of the current three that's
6 there?

7 MR. SCHNEPP: So Section 105.604 who
8 may file a petition for review B --

9 MS. CARTER: As in boy.

10 HEARING OFFICER RABCZAK: I just
11 want to find the text. So this is already in the
12 proposal?

13 MR. SCHNEPP: This is part of the
14 proposal.

15 HEARING OFFICER RABCZAK: Thank you.

16 MS. LIU: Question 35. Oh, I'm
17 sorry.

18 MR. GRABLE: Daryl Grable for
19 Citizens Against Ruining the Environment. I have
20 five follow-up questions.

21 So on page 78 of the Statement
22 of Reasons, Illinois EPA is proposing the
23 following language for Section 204.1330, quote,
24 within one year after receipt of a complete

1 application a permit shall, emphasis added, be
2 granted or denied by the Illinois EPA and in
3 proposed Section 105.606(b) the text -- the
4 proposed section is, quote, if the permit
5 applicant wishes to appeal the Agency's failure to
6 act on an application for a PSD permit within the
7 timeframe specified in Section 39(f)(3) of the
8 act, the person must file a petition for review
9 with the clerk before the Agency denies or issues
10 the final permit.

11 My first question is, in
12 practice, wouldn't proposed Section 105.606(b) act
13 to give the Illinois EPA greater than one year to
14 grant a permit so long as the applicant doesn't
15 immediately file an appeal based on the Agency's
16 inaction?

17 MS. CARTER: The Agency will respond
18 to that in post-hearing comments.

19 MR. GRABLE: Question 2. What does
20 this mean in regards to the requirement in
21 proposed Section 204.1330, which was based on
22 Section 39(f)(3) of the Illinois Environmental
23 Protection Act as well as Section 165(c) of the
24 Clean Air Act which requires a final permitting

1 decision within one year of receipt of a complete
2 application for a PSD permit.

3 MS. CARTER: We'll respond to that
4 in post-hearing comments.

5 MR. GRABLE: Question 3 starts out
6 with a scenario. Say that Illinois receives a
7 complete application and they do not grant or deny
8 a permit within one year and the applicant doesn't
9 immediately file for appeal. In theory, wouldn't
10 this scenario be able to continue for an
11 indefinite amount of time until Illinois EPA
12 issues a decision or the applicant files an
13 appeal?

14 MS. CARTER: We will respond to that
15 in post-hearing comments.

16 MR. GRABLE: Next -- question 4.
17 Could the Illinois EPA explain how this would
18 conform with the proposed Section 204.1330 -- or
19 would this conform with the requirements found in
20 section -- proposed Section 204.1300 Section
21 39(f)(3) of the act and Section 165(c) of the
22 Clean Air Act which requires -- or which mandates
23 an Illinois EPA permit decision within one year
24 after receipt of a complete application for a PSD

1 permit.

2 MS. CARTER: The Agency will respond
3 to that in post-hearing comments.

4 MR. GRABLE: Final question. What
5 is Illinois EPA's reasoning for not considering a
6 permit to be denied if a decision is not reached
7 within one year, thus allowing Illinois EPA to
8 comply with all of the requirements found in
9 proposed Section 204.1330, Section 39(f) (3) of the
10 act as well as Section 165(c) of the Clean Air
11 Act?

12 MS. CARTER: And we'll respond to
13 that in post-hearing comments.

14 MR. GRABLE: Thank you.

15 MS. CARTER: Thank you.

16 HEARING OFFICER RABCZAK: Should we
17 continue?

18 MR. GRABLE: Yes.

19 MS. LIU: Question 35. Section
20 204.1340(g) requires IEPA to post a notice of the
21 rescission determination on a public website
22 identified by IEPA within 60 days of the
23 rescission.

24 Please clarify what criteria the

1 Agency will use to identify the website to post
2 the notice.

3 MR. ROMAINE: As a general matter,
4 in a 2016 rulemaking, the US EPA found that
5 electronic notice by means of e-mail or e-notice
6 shall be the primary form of public notice for the
7 new source review permit programs under the Clean
8 Air Act. This was a proceeding addressed by 81
9 Federal Register 71613 on October 18th, 2016. US
10 EPA went on to address the website at which
11 documents must be posted and made available for
12 access by the public during public comment periods
13 stating the following.

14 In order to satisfy the
15 requirements for e-access when e-notice is
16 provided, the permitting authority shall
17 electronically post for the duration of the public
18 comment period the draft permit on a publicly
19 accessible website identified by the permitting
20 authority, which may include the permitting
21 authority's public website, an online state
22 permits register or a publicly available
23 electronic document management website that allows
24 for downloading documents.

1 This is what they said at 81
2 Federal Register 71.1613. In this rulemaking, US
3 EPA also stated that the public shall be notified
4 of permit rescissions by e-notice with the notice
5 of rescissions posted on the same website that the
6 permitting authority uses to post documents for
7 public comment periods on draft permits. This was
8 required as US EPA found that each permitting
9 authority shall have a single consistent noticing
10 method for all subject notices to avoid confusion.

11 HEARING OFFICER RABCZAK: As a
12 follow-up, is there a specific website in mind
13 already or will you have to make a decision later
14 about that?

15 MR. ROMAINE: We currently have a
16 website.

17 HEARING OFFICER RABCZAK: So it will
18 be on the same website?

19 MR. ROMAINE: Yes, we can provide
20 identification of that website in post-hearing
21 comments.

22 HEARING OFFICER RABCZAK: Thank you.

23 MR. ROMAINE: Obviously, given the
24 nature of IT departments, that may change over

1 time, but once we have a website, it'll be
2 consistently used until we have a new website.

3 MS. ZALEWSKI: You're talking to our
4 IT department right here. She moonlights as our
5 IT department.

6 HEARING OFFICER RABCZAK: We are
7 proceeding to Subpart J.

8 MS. LIU: Subpart J. Innovative
9 control technology. Question 36. Section
10 204.1500(b)(4) requires IEPA to ensure that the
11 source or modification would not before the date
12 specified by IEPA cause or contribute to a
13 violation of an applicable National Ambient Air
14 Quality Standard.

15 Please comment on whether IEPA
16 needs to ensure that the source or modification
17 does not also cause or contribute to a violation
18 of any maximum allowable increase.

19 MR. ROMAINE: As a general matter,
20 Section 204.1500(b) accurately reflects the
21 requirements of the federal PSD program -- permit
22 program. Provisions of 40 CFR 52.21(v) that
23 address, quote, innovative control technology, end
24 quote, do not require that use of such control

1 technology does not result in exceedances of the
2 applicable PSD increments during the demonstration
3 period that may be authorized for such technology
4 under the PSD program.

5 However, the US -- the use of
6 such control technology cannot be authorized if it
7 would impact on an area where an applicable
8 increment is known to be violated and that's
9 described in 40 CFR 52.21(v)(iv)(b). In this
10 regard, it is relevant that the term, quote,
11 innovative control technology is a term of art
12 under the PSD program.

13 It is specifically defined by 40
14 CFR 52.21(b)(19). Innovative control technology
15 means any system of air pollution control that has
16 not adequately been demonstrated in practice but
17 would have a substantial likelihood of achieving
18 greater continuous emission reduction than any
19 controlled system in current practice or of
20 achieving at least comparable reduction at lower
21 costs in terms of energy, economics or non-air
22 quality environmental impacts.

23 Then as observed by this
24 question, the particular provisions of the PSD

1 program related to the use of innovative control
2 technology are not available if the applicants
3 cannot show that the use of such technology would
4 not cause or contribute to a violation of any
5 applicable National Ambient Air Quality Standards.
6 That's provided by 40 CFR 52.21(2)(iv)(a). As
7 such, the protection of public health and welfare
8 is provided for during the demonstration period
9 for an innovative control technology.

10 In addition, as the provisions
11 for use of innovative control technology at-most
12 provide for a demonstration period that is between
13 four and seven years in duration, any exceedance
14 of an applicable PSD increment must be temporary.

15 After the conclusion of the
16 demonstration period, the applicable PSD increment
17 may not be violated. That's provided for by 40
18 CFR 52.21(v)(2)(iii). In this regard, if the
19 innovative control technology fails, a source may
20 be provided with up to three years to meet the PSD
21 requirement for BACT using demonstrated control
22 technology.

23 However, during this further
24 period in which the source is transitioning from

1 innovative to demonstrative control technology,
2 the PSD increments must be met. Emissions must be
3 sufficiently controlled that the applicable PSD
4 increments would not be violated.

5 HEARING OFFICER RABCZAK: Does
6 anybody have questions to Subpart J? We will now
7 proceed to Subpart K.

8 MR. KLEIN: So Subpart K, plantwide
9 applicability limitation. Question 37.

10 In Section 204.1630, please
11 explain what the Agency means by emission
12 limitations enforceable as, quote, a
13 practicable -- a practical matter, end quote.

14 MS. CARTER: Thank you. The Agency
15 will respond to that in post-hearing comments.

16 MR. KLEIN: Question 38. According
17 to Section 204.1790, the owner or operator of a
18 major stationary source requests a plantwide
19 applicability limitation. Please explain the
20 following.

21 38A. Proposed Section
22 204.1800(a)(5) provides that each PAL regulates
23 emissions of only one pollutant. Does the owner
24 or operator specify the NSR pollutant that is the

1 subject of the PAL application or does the
2 application need to address all potential NSR
3 pollutants? Does an application for PAL under
4 proposed Section 204.1800(a) require producing the
5 calculations of baseline actual emissions for all
6 NSR pollutants including greenhouse gases?

7 MR. SCHNEPP: This is Jason Schnepp.
8 The owner or operator of a source must specify the
9 PAL pollutant that is being addressed in its
10 application for the PAL permit. The application
11 need not address other pollutants to satisfy the
12 PAL application requirements in Section 204.1790.
13 The application for a PAL requires, among other
14 things, calculations of the baseline actual
15 emissions for the PAL pollutant with supporting
16 documentation and this requirement is found at 35
17 Ill. Adm. Code Section 204.1790(b).

18 Baseline actual emissions for
19 the PAL pollutant are also addressed in the
20 renewal of a PAL and when increasing the PAL
21 during the PAL effective period. And those
22 requirements are found at 35 Ill. Adm. Code
23 204.1860(c)(1) and 204.1870(a)(2) respectfully.

24 MR. KLEIN: 38B. Proposed Section

1 204.1800(a) provides that IEPA, quote, is allowed
2 to establish a PAL. B(i).

3 Does that mean that IEPA
4 exercises discretion on whether to grant a PAL --
5 grant a PAL application at a major stationary
6 source.

7 MR. SCHNEPP: Yes, consistent with
8 40 CFR 52.21(aa) and 51.166(w), the Illinois EPA
9 will possess discretion on whether to process a
10 PAL application. Consistent with 40 CFR
11 52.21(aa)(4)(i) and 51.166(w)(4)(i) Section
12 204.1800(a) proposes the use of the phrase, quote,
13 is allowed to establish a PAL. In addition, this
14 is consistent with the applicability provisions
15 for PAL's as proposed in Section 204.1600(a)
16 stating that, quote, the Illinois EPA may approve
17 the use of an actual PAL for any existing major
18 stationary source if the PAL meets the
19 requirements in this subpart.

20 Notably, 40 CFR 52.21(aa)(1)(i)
21 and 40 CFR 51.166(w)(1)(i) provide that the
22 administrator or the reviewing authority
23 respectively, quote, may approve the use of an
24 actual PAL.

1 As the term "may" and the phrase
2 "is allowed to" are not imperative, discretion is
3 allowed. It should be noted as well that the
4 Illinois EPA is not aware of any federal case law
5 interpreting this phrase as mandatory. To the
6 extent that the Agency fails to act on an
7 application for a PSD permit within the timeframe
8 specified by Section 39(f)(3) of the act,
9 40.3(a)(1) and proposed 35 Ill. Adm. Code
10 105.604(b) would authorize an applicant to
11 petition for a hearing before the Board to compel
12 action on the part of the Agency.

13 HEARING OFFICER RABCZAK: Can I
14 clarify? In Section 204.1800(a), it specifies
15 that IEPA is allowed to establish, provided the
16 requirements of the section are met. Does that
17 mean that the requirements listed in this section
18 are not the exclusive list?

19 So to clarify what I'm asking
20 is, even if the applicant meets the requirements,
21 IEPA still has a discretion which means it might
22 look at something else on top of these
23 requirements?

24 MR. KLEIN: I think that kind of

1 gets to the next two questions.

2 MS. CARTER: The Agency will respond
3 to that in post-hearing comments.

4 HEARING OFFICER RABCZAK: Martine?

5 MR. KLEIN: Just to follow-up on the
6 previous response, and you don't have to respond
7 now, you can respond in post-hearing comments.

8 But then because "may" is used
9 in other instances to indicate discretionary
10 action, would it be appropriate to change "is
11 allowed" to "may" in 1800(a)?

12 MS. CARTER: The Agency will respond
13 to that in post-hearing comments.

14 MR. KLEIN: So 38B(ii), does the PAL
15 application limit or narrow the scope of IEPA's
16 review of eligible PAL pollutants? If so, what
17 criteria does IEPA use in evaluating a PAL permit
18 application and subject PAL pollutants?

19 MR. SCHNEPP: The Illinois EPA's
20 review of the application would be limited to
21 those pollutants sought to be covered by the PAL
22 permit. The Illinois EPA would rely on
23 requirements set forth in Part 204 Subpart K
24 plantwide applicability limitation. For instance,

1 in evaluating the completeness of the application,
2 the Illinois EPA would look to the requirements in
3 Section 204.1790 dealing with permit application
4 requirements.

5 In establishing a PAL, the
6 Illinois EPA would look to the requirements of
7 Section 204.1800, General Requirements for
8 Establishing PAL. In setting any ten-year actual
9 PAL level, the Illinois EPA would look to the
10 requirements of Section 204.1820 setting the
11 ten-year actual PAL levels.

12 In those instances, when a PAL
13 permit is issued, upon evaluating the application
14 and the applicable requirements of Subpart K, the
15 Illinois EPA would issue a permit consistent with
16 Section 204.1930 Contents of a PAL Permit. Rather
17 than 1930, that should read 1830.

18 MR. KLEIN: I'm just trying to find
19 out if I want to ask a follow-up.

20 MR. SCHNEPP: Sure.

21 MR. KLEIN: Okay. I'll move on.
22 38B(iii). Should, in this case, additional
23 criteria be included in proposed amendments?

24 MR. SCHNEPP: No. Part 204 Subpart

1 K is consistent with 40 CFR 52.21(aa) and
2 51.166(w). The requirements of Subpart K would
3 form the basis of any review performed by the
4 Illinois EPA.

5 HEARING OFFICER RABCZAK: Going back
6 to my previous question, which I think is similar
7 to this question.

8 So if you could clarify, and as
9 I mentioned, you're going to do it in post-hearing
10 comments, the discretion part. So we have a list
11 of criterias in Section 204.1800. If the
12 applicant meets those requirements and the Agency
13 is still using its discretion does not grant PAL,
14 what would the Agency reason its decision on?

15 Are there any other criterias
16 whether they are already in the rules or more
17 quality --

18 (Whereupon, a cellphone rang.)

19 HEARING OFFICER RABCZAK: The
20 question is, what other things would the Agency
21 consider when it makes a decision -- when it uses
22 its discretion to deny?

23 MR. SCHNEPP: We'll respond to this
24 in post-hearing comments.

1 HEARING OFFICER RABCZAK: Thank you.

2 MR. KLEIN: 38C. Under proposed
3 Section 204.670, is a greenhouse gas PAL applied
4 only in the event of a significant emissions
5 increase of a greenhouse gas emission?

6 MR. SCHNEPP: No, the owner or
7 operator of a major source would apply for a PAL
8 permit for GHG's or any other regulated NSR
9 pollutant as a preemptive measure so that PSD
10 permits would not be required for possible future
11 projects at the source. Similar to a PAL for
12 other regulated NSR pollutants, a PAL for a GHG
13 would be established based on the sum of the
14 baseline actual emissions as defined in Section
15 204.240 for each emissions unit at the source and
16 the applicable significant emission rate.

17 For GHG's, emissions are to be
18 expressed in terms of carbon dioxide equivalents
19 and the significant emissions rate is 75,000 tons
20 per year as carbon dioxide equivalents.

21 MR. KLEIN: Question 39. Section
22 204.120(a) provides that, quote, the plan shall
23 provide, end quote.

24 Please clarify whether "plan"

1 refers to the State Implementation Plan. If not,
2 please explain the proposed intent.

3 MS. CARTER: I'm sorry. What was
4 the citation you referred to again? Was it
5 Section 204.1820(a) or --

6 MR. KLEIN: Yes.

7 MS. CARTER: I thought you said
8 something different.

9 MR. KLEIN: Sorry.

10 MS. CARTER: Is that the one?

11 MR. KLEIN: 1820(a).

12 MS. CARTER: I just wanted to make
13 sure.

14 MR. SCHNEPP: Yes, the term plan in
15 proposed Section 204.1820(a) refers to the SIP.

16 MR. KLEIN: Question 40. In Section
17 204.1830, would it be acceptable to IEPA if the
18 proposed Subsection A is made the preamble and
19 Subsection's A(1) through A(10) are renumbered as
20 A through J such as there would be no Subsection B
21 as provided -- as proposed?

22 MR. SCHNEPP: The proposed revisions
23 to Section 204.1830 would seem acceptable.

24 However, the Illinois EPA is not prepared at this

1 time to agree to the suggested change and we will
2 address this in post-hearing comments.

3 MR. KLEIN: Question 41. In Section
4 204.1840(a), please clarify whether all PAL
5 permits will have a ten-year effective period or
6 the ten-year period is the maximum duration.

7 Please comment on why ten years
8 was chosen as the effective PAL period rather than
9 a period such as five years that follows the
10 permit cycle.

11 MR. SCHNEPP: PAL permits will have
12 a ten-year effective period and this period was
13 chosen rather than another period to be consistent
14 with 40 CFR 52.21(aa)(4)(i) romanette F and
15 51.166(w)(i)(4) romanette F.

16 MR. KLEIN: Question 42. Please
17 clarify whether the reopening of the PAL permit
18 under Section 204.18- -- 204.1840(b)(1) is
19 instigated always by IEPA or whether the permittee
20 may request that IEPA reopen the permit.

21 MR. SCHNEPP: Reopening of a PAL
22 permit pursuant to Section 204.1840(b)(1) could be
23 initiated by either the Illinois EPA or upon
24 application by the permittee. For example,

1 Section 204.1840(b)(1)(c) specifies that the
2 Illinois EPA must reopen the PAL permit to revise
3 the PAL to reflect an increase in the PAL as
4 provided under Section 204.1870. Since section
5 204.1870(a)(1) requires the owner or operator to
6 submit a complete application to request an
7 increase in the PAL limit, this reopening of the
8 PAL permit would be initiated by the applicant.

9 Conversely, Section
10 204.1840(b)(1)(b) specifies that the Illinois EPA
11 must reopen the PAL permit to reduce the PAL if
12 the owner or operator of the major stationary
13 source creates credible emission reductions for
14 use as offsets pursuant to 35 Ill. Adm. Code Part
15 203. Since the offset generation could occur as
16 part of a new project, the Illinois EPA could
17 initiate reopening of the PAL permit pursuant to
18 Section 204.1840(b)(1)(b).

19 MR. KLEIN: Question 43. In Section
20 204.1870(a)(1), please clarify whether a, quote,
21 complete application, end quote, for requesting an
22 increase in PAL must meet only the requirements of
23 this section or other permit application
24 requirements of Section's 204.1790 and 1830.

1 Also, comment on whether an approval of PAL
2 increase during the effective period could be
3 treated as a renewal to extend the effective
4 period.

5 MR. SCHNEPP: Section 204.1870(a)(1)
6 does not excuse a permit applicant from the
7 requirements of Section 204.1790 so as to have a
8 complete and up-to-date permit application when
9 making a request to increase a PAL during the
10 effective period.

11 The approval of a PAL increase
12 under Section 204.1870 could not be treated as a
13 renewal to extend the effective period of the PAL.
14 This is because the information required under
15 Section 204.1870 would not necessarily satisfy the
16 requirements for renewal of a PAL under Section
17 204.1860.

18 However, nothing in Section
19 204.1870 forecloses increasing the PAL during the
20 effective period at the same time as renewal of a
21 PAL in Section 204.1860.

22 MR. KLEIN: And then question 44.
23 If a PAL is rendered invalid under Section
24 204.1880(a)(4), please clarify whether the source

1 will be subject to enforcement or whether the
2 Agency will establish allowable emission
3 limitations in revised permit under Section
4 204.1850.

5 MS. CARTER: The Agency will respond
6 to this question in post-hearing comments.

7 HEARING OFFICER RABCZAK: Does
8 anybody else have any substantive questions
9 because the remainder of questions we have is just
10 language.

11 MS. CARTER: If I could just simply
12 note for the Hearing Officer that the Agency does
13 plan to respond to those questions on clarifying
14 language in post-hearing comment.

15 HEARING OFFICER RABCZAK: All of
16 them?

17 MS. CARTER: All of them.

18 HEARING OFFICER RABCZAK: Does
19 anybody have objections to just include them at
20 this point? Okay. Any questions in Springfield?
21 No.

22 MS. DRIVER: We do have just a
23 couple on behalf of IERG. This is LaDonna Driver.

24 Going back to Section 204.1300,

1 this is on the Notification of Application
2 Completeness, our question is, is it the Illinois'
3 EPA intent to issue this notification in writing?

4 MS. CARTER: The Agency will respond
5 to this question in post-hearing comments.

6 MS. DRIVER: And then following up
7 on that, what is the impact of the Agency not
8 issuing that notice within 30 days?

9 MS. CARTER: The Agency will respond
10 to that in post-hearing comments.

11 MS. DRIVER: Thank you.

12 HEARING OFFICER RABCZAK: Do you
13 have any further questions?

14 MS. DRIVER: No, we do not.

15 HEARING OFFICER RABCZAK: Okay.
16 Does anybody else in Springfield have any
17 questions?

18 MS. PAPADIMITRIU: This is Chairman
19 Papadimitriu. I wonder if given the plethora of
20 questions that the Agency plans to respond in
21 writing, I wonder if it would be possible for the
22 Agency to do so before our next hearing.

23 MS. CARTER: The Agency will make
24 every endeavor to do that. Unfortunately, the

1 people that are sitting before you are not
2 typically rulemaking staff. We are permitting
3 staff and they're assigned a permitting attorney.
4 So we have other deadlines associated with the
5 issuance of permits.

6 So we will make every endeavor
7 to do that. I just don't want to make a hundred
8 percent commitment here today. That's -- that's
9 kind of where we are right now. I understand the
10 need to do that.

11 MS. PAPADIMITRIU: And if there are
12 certain -- you know, rather than submitting all of
13 them versus none, if there were a few answers or
14 several answers that the Agency could provide
15 ahead of time, it would be extraordinarily helpful
16 for me and I suspect for others in the room.

17 MS. CARTER: And we definitely
18 understand and appreciate that and we will
19 definitely be able to provide responses to
20 definitely a number of the questions that were
21 posed here today.

22 MS. PAPADIMITRIU: Great. Thank
23 you.

24 HEARING OFFICER RABCZAK: Would you

1 be able to respond to legal questions before the
2 next hearing?

3 MS. CARTER: We are -- I am -- we
4 are working to endeavor to respond to the legal
5 questions that were previously posed by, you
6 know --

7 HEARING OFFICER RABCZAK: The
8 parties.

9 MS. CARTER: -- the parties that
10 were previously posed before we stepped into the
11 room today.

12 HEARING OFFICER RABCZAK: Okay. Do
13 you have any timeframe in mind?

14 MS. CARTER: Like I said before, we
15 are working to get those done. You know, the
16 group of people sitting here spent their entire
17 Thanksgiving holiday at the office. So, you know,
18 we are tapped very, very thin, but, like I said,
19 we're working to get you guys answers to every
20 last one of the questions.

21 HEARING OFFICER RABCZAK: We can
22 probably discuss that, too, if it would make sense
23 to respond to the hearing so that we have answers
24 and we don't have to go through the same questions

1 again. Right now we have a hearing scheduled
2 January 15th. Maybe it makes sense to move it to
3 February so that we have the --

4 MS. CARTER: I definitely see that
5 as a good position to take because there is
6 obviously no statutory deadline associated with
7 this. It would enable us to thoroughly respond to
8 all the questions before the next hearing.

9 As you can tell by the responses
10 that we have given here today, we really explored
11 and really looked to everyone's questions to try
12 to provide a thorough response. So to enable us
13 to do that, that would definitely help.

14 HEARING OFFICER RABCZAK: Does
15 anyone have any objection to that? In this case,
16 we would postpone the hearing and allow you time
17 to respond before the next hearing. Can you help
18 me understand the timeframe for that?

19 MS. CARTER: Okay.

20 HEARING OFFICER RABCZAK: Would --
21 would you be able --

22 MS. PAPADIMITRIU: Tanya, do you
23 want to go off the record?

24 HEARING OFFICER RABCZAK: Yeah,

1 let's go off the record for a little bit.

2 (Whereupon, a break was taken
3 after which the following
4 proceedings were had.)

5 HEARING OFFICER RABCZAK: So the
6 Agency agrees to submit the answers to questions
7 posed during this hearing today before January
8 25th. That would include answers to questions --
9 the Board's questions 45 through 47, so all the
10 remaining questions. The Hearing Officer will
11 schedule a prehearing conference in the week of
12 December 10th to 14th and the specific date will
13 be indicated in the Hearing Officer order to
14 discuss the rescheduling of the January 15th
15 hearing.

16 Right now, we have some time in
17 January -- I mean, February in mind, but we will
18 discuss the exact date at the prehearing
19 conference, which means that we will reschedule
20 all the pre-filing deadlines as well.

21 Does anybody else have any
22 questions before we conclude? The next hearing we
23 intend to schedule it by video conference. I
24 mean, we announced it scheduled by video

1 conference and if you have any objections to the
2 inconvenience of it, let me know and we can
3 discuss that at the prehearing conference.
4 Otherwise, we can continue doing the video
5 conference for the convenience of people on both
6 sides.

7 The transcript of today's
8 hearing should be available within five business
9 days and please check the transcript if you have
10 any corrections to it. Please file the respective
11 motions. If nobody has any more questions, I
12 think we can conclude the hearing today for the
13 very efficient hearing and please go enjoy your
14 lunch. I'm sorry to keep you.

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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., 2018.

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