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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED NEW 35 ILL. ADM. CODE 217, R01-11
SUBPART T, CEMENT KILNS, AND (Rulemaking-Air)
AMENDMENTS TO 35 ILL. ADM. CODE
211 AND 217

Proceedings held on November 3, 2000, at 10:00 a.m., at the
Illinois Pollution Control Board, 600 South Second Street, Suite
403, Springfield, Illinois, before Joel J. Sternstein, Hearing
Officer.

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

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A P P E A R A N C E S

Nicholas J. Melas, Board Member

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: Robert A. Messina
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY PANEL PRESENT:
Dennis A. Lawler
Berkley L. Moore
Yoginder Mahajan

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E X H I B I T S

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(No exhibits were marked.)

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1 P R O C E E D I N G S

2 (November 3, 2000; 10:00 a.m.)

3 HEARING OFFICER STERNSTEIN: Let's go on the record. Good
4 morning. My name is Joel Sternstein. I have been appointed by
5 the Illinois Pollution Control Board to serve as Hearing Officer
6 in this proceeding, which is entitled, In the Matter of:
7 Proposed New 35 Illinois Administrative Code 217, Subpart T,
8 Cement Kilns, and Amendments to 35 Illinois Administrative Code
9 211 and 217. The docketing number for this rulemaking is R01-11.
10 Sitting next to me on my left is Nicholas Melas, who is the Board
11 Member assigned to this matter.

12 Copies of documents relevant to this rulemaking are on the
13 table in the front of the room to my left, over behind Darlene,
14 our court reporter.

15 Just a few procedural matters to discuss for the record.
16 On August 21st of 2000, the Illinois Environmental Protection
17 Agency filed this proposal for rulemaking. In the August 24th of
18 2000 First Notice Opinion and Order the Board adopted the
19 Agency's proposal. The proposal was published in the Illinois
20 Register on September the 8th of 2000, starting at pages 13,563
21 and 13,579. This proposal was filed pursuant to Section 28.5 of
22 the Environmental Protection Act, entitled Clean Air Act Rules,
23 Fast Track Procedure.

24 Pursuant to the provisions of that section, the Board is

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1 required to proceed within set time frames for the adoption of
2 the regulation. As stated in the Board's August 25th of 2000
3 Hearing Officer Order, the Board has no discretion to adjust
4 these time frames under any circumstances.

5 Also pursuant to Section 28.5, the Board has scheduled
6 three hearings, as stated in the August 25th of 2000 Hearing
7 Officer Order. The first hearing in this matter, held on October
8 3rd of 2000 in Chicago, was confined to testimony by the Agency's
9 witnesses concerning the scope, applicability, and basis of the
10 rule.

11 Today's hearing, which is the second hearing in this
12 matter, is devoted to economic impact considerations and
13 presentation of testimony, documents, and comments filed by
14 affected entities and all other interested parties.

15 The third hearing currently scheduled for this matter is to
16 be held Wednesday, November 15th of 2000, at 11:00 a.m. in the
17 Board's conference room on the 11th Floor of the James R.
18 Thompson Center in Chicago. It will be devoted solely to any
19 Agency response to the materials submitted at the second hearing,
20 which is today, of course.

21 The third hearing will be cancelled if the Agency indicates
22 to the Board that it does not intend to introduce any additional
23 material. If the third hearing is cancelled, all persons on the
24 notice list will be advised through a Hearing Officer Order.

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1 Today's hearing will be governed by the Board's procedural
2 rules for regulatory proceedings. All information which is
3 relevant and not repetitious or privileged will be admitted. You
4 see that at 35 Illinois Administrative Code 102.282. All
5 witnesses will be sworn and subject to cross-questioning.

6 Are there any questions on procedure? Is there anything
7 you would like to add, Mr. Melas?

8 BOARD MEMBER MELAS: Nothing. Thank you.

9 HEARING OFFICER STERNSTEIN: A couple of things on the
10 economics of the rule. Pursuant to Section 28.5 of the Act, the
11 Board shall accept evidence on the economic impact of the
12 proposed rule and shall consider the economic impact of the rule
13 based on the record. Included in the Board's economic analysis
14 of the rule is the economic impact statement or ECIS. Pursuant
15 to Section 27(b) of the Act the Board is required to request the
16 Department of Commerce and Community Affairs, or DCCA, to conduct
17 an ECIS on certain proposed rules prior to the adoption of those
18 rules.

19 If DCCA chooses to conduct the ECIS, DCCA has 30 to 45 days
20 after such a request to produce a study of the proposed rules.
21 The Board must then make the ECIS or DCCA's explanation for not
22 conducting the study available to the public at least 20 days
23 before a public hearing on the economic impact of the proposed

24 rules. In accordance with Section 27(b), on August 24th of 2000,

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1 the Board requested that DCCA conduct an ECIS for Docket R01-11.

2 In the request the Board stated that if it did not receive
3 a reply from DCCA within ten days, it would rely on a March 10th
4 of 2000 letter from DCCA. That March 10, 2000 DCCA letter
5 notified the Board that DCCA lacked the technical and financial
6 resources to respond to any rulemakings. The Board did not
7 receive a reply from DCCA within the ten day period.

8 Accordingly, the Board relies on the March 10, 2000 DCCA letter
9 as an explanation for no ECIS being submitted for Docket R01-11.

10 The letter that I referenced, the March 10, 2000 DCCA
11 letter, is available for review at the Board's clerk's office in
12 Chicago, and I also provided copies on the table to my left
13 behind the court reporter.

14 Section 27(b) also requires the Board to have a hearing on
15 either the ECIS or DCCA's decision not to perform an ECIS, thus,
16 we will hear testimony from anyone who wishes to comment on
17 DCCA's decision not to conduct an ECIS for R01-11. So right now
18 I would just like to ask, does anyone wish to comment on DCCA's
19 decision not to conduct the ECIS?

20 All right. Seeing no one, we will move on to other
21 economic considerations.

22 At this point, I guess actually since we have a few
23 questions for the Agency, we should probably swear in the Agency

24 witnesses as a panel right now. So why don't we go ahead and do

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1 that.

2 MR. MESSINA: Do we need to be resworn?

3 HEARING OFFICER STERNSTEIN: Pardon?

4 MR. MESSINA: Do we need to be resworn?

5 HEARING OFFICER STERNSTEIN: Yes, let's just go ahead and
6 do that.

7 (Whereupon Dennis Lawler, Berkley Moore, and Yoginder
8 Mahajan were sworn by the Notary Public.)

9 HEARING OFFICER STERNSTEIN: At this point I will ask if
10 anyone has any comments or questions on the economic impact of
11 the rule in general?

12 Mr. Melas, I know you had a couple there. Perhaps you
13 would like to ask those now.

14 BOARD MEMBER MELAS: Yes. If this rulemaking will result
15 in an increase or decrease in cost, could you specify the fiscal
16 year in which this change will first occur and the dollar amount
17 of that effect?

18 MR. YOGINDER MAHAJAN: There is --

19 HEARING OFFICER STERNSTEIN: Mr. Mahajan, would you
20 identify yourself, please? I am sorry.

21 MR. YOGINDER MAHAJAN: Yes. I am Yoginder Mahajan with the
22 Illinois EPA. There is a cost of 1.9 million per year, just

23 based on the 1999 dollars.

24 HEARING OFFICER STERNSTEIN: I am sorry. So if I

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1 understand your question correctly, this is -- Mr. Melas, you
2 were asking about the cost to the Agency?

3 BOARD MEMBER MELAS: Yes.

4 HEARING OFFICER STERNSTEIN: I think we are just asking
5 about the Agency's internal costs.

6 BOARD MEMBER MELAS: Yes, internal.

7 MR. YOGINDER MAHAJAN: There is no cost to the Agency for
8 this proposal.

9 HEARING OFFICER STERNSTEIN: Oh, there won't be. Okay. So
10 it won't be 1.9 million.

11 MR. YOGINDER MAHAJAN: No.

12 HEARING OFFICER STERNSTEIN: Okay. I thought it sounded a
13 little high.

14 BOARD MEMBER MELAS: Can you specify or identify the
15 funding source, including the fund and appropriation lines for
16 this activity?

17 MR. DENNIS LAWLER: Yes. Dennis Lawler with the Agency.
18 The funding source will be the Clean Air Act permit fund and the
19 environmental permit and inspection fund.

20 BOARD MEMBER MELAS: Okay. Do you anticipate an increase
21 or a decrease in the cost to another state agency?

22 MR. DENNIS LAWLER: No, we don't.

23 BOARD MEMBER MELAS: Will this rulemaking have any affect
24 on state revenues or expenditures not already indicated above?

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1 MR. DENNIS LAWLER: No. No, there won't be.

2 BOARD MEMBER MELAS: Indicate the economic affect and
3 specify the persons affected.

4 HEARING OFFICER STERNSTEIN: I think you are referring to
5 the regulated community there, Mr. Melas?

6 BOARD MEMBER MELAS: Yes, to the regulated community, how
7 many --

8 MR. YOGINDER MAHAJAN: There are four kilns.

9 BOARD MEMBER MELAS: Four?

10 MR. YOGINDER MAHAJAN: Yes, there are four kilns at three
11 facilities.

12 BOARD MEMBER MELAS: Three different facilities and a total
13 of four kilns?

14 MR. YOGINDER MAHAJAN: Yes.

15 HEARING OFFICER STERNSTEIN: Has there been any -- just to
16 follow-up on that question, has there been any study done to
17 indicate the cost that this rule will impose on each of those
18 three facilities?

19 MR. YOGINDER MAHAJAN: It is -- on the four facilities -- I
20 mean the three facilities, the four kilns, it would be 1.9
21 million dollars per year.

22 HEARING OFFICER STERNSTEIN: Okay. So that's where the 1.9
23 million comes from?

24 MR. YOGINDER MAHAJAN: Yes.

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1 HEARING OFFICER STERNSTEIN: And that will be 1.9 million
2 for all four kilns together or is that --

3 MR. YOGINDER MAHAJAN: Yes.

4 HEARING OFFICER STERNSTEIN: -- for each kiln?

5 BOARD MEMBER MELAS: That is the total --

6 MR. YOGINDER MAHAJAN: Per year.

7 HEARING OFFICER STERNSTEIN: Per year?

8 MR. YOGINDER MAHAJAN: Per year.

9 HEARING OFFICER STERNSTEIN: Okay. Is that just to
10 implement the changes right off the bat, or will that be 1.9
11 million for the first year and then every year after that?

12 MR. YOGINDER MAHAJAN: This 1.9 million is --

13 MR. BERKLEY MOORE: Annualized cost, yes.

14 MR. YOGINDER MAHAJAN: -- annually.

15 HEARING OFFICER STERNSTEIN: The annual cost?

16 MR. YOGINDER MAHAJAN: Yes.

17 HEARING OFFICER STERNSTEIN: Okay.

18 BOARD MEMBER MELAS: Do you have any idea as to whether
19 this rulemaking may have an indirect affect that may result in
20 increased administrative costs, for example, any change in the
21 requirements such as filing, documentation, reporting, or

22 completion of forms?

23 MR. YOGINDER MAHAJAN: That 1.9 million will include all of
24 these costs, and specifically looking at the background document,

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1 the U.S. EPA did a study and they included these costs, and
2 approximately 15 percent of the administrative and monitoring
3 costs is included in the 1.9 million.

4 BOARD MEMBER MELAS: Out of the 1.9, 15 percent would be
5 going towards administrative, record keeping, documentation,
6 etcetera?

7 MR. YOGINDER MAHAJAN: Yes, which is approximately 294,000.

8 HEARING OFFICER STERNSTEIN: Per year?

9 BOARD MEMBER MELAS: Per year?

10 MR. YOGINDER MAHAJAN: Yes.

11 BOARD MEMBER MELAS: Okay. That's the only questions I had
12 on the economic.

13 HEARING OFFICER STERNSTEIN: Does anybody else have any
14 questions on the economic impact of the rule?

15 Just so we have this on the record, I know we had discussed
16 this off the record. The Board had requested that some of the
17 figures that were provided in the prefiled testimony be updated
18 to year 1999 or year 2000 dollars, and if you want to go ahead
19 and indicate how you will be submitting those.

20 MR. MESSINA: Correct. We have started putting those

21 numbers together and we intend to include those in our comments
22 after this hearing.

23 HEARING OFFICER STERNSTEIN: Great. Thank you. At this
24 point I would like to open up questions regarding any other

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1 aspect of the rule, whether it be economic or noneconomic. I see
2 we do have one member of the regulated community here. Again, I
3 would just like to open up the floor to any questions that anyone
4 may have of the Agency.

5 There was one matter left over from the first hearing. I
6 believe Mr. Peterson from IERG had asked about the opt in
7 provision. Specifically, it appears that cement kilns may opt in
8 to the EGU or electrical generating unit trading program, and I
9 believe Mr. Peterson also asked whether or not the kilns would be
10 allowed to opt in to the non EGU trading program. We would just
11 like to get that on the record as yes or no.

12 MR. DENNIS LAWLER: Well, at the time of the last hearing
13 the Agency had not yet filed with the Board a proceeding to deal
14 with the non EGU category, which is essentially industrial
15 boilers. Since that time we have filed a request for revisions
16 to Subpart U and -- for Subpart U and Subpart X to the Board.
17 The Subpart U provisions do include the ability of a kiln, if
18 they want to, to opt in to the trading program.

19 HEARING OFFICER STERNSTEIN: To the non EGU trading
20 program?

21 MR. DENNIS LAWLER: To the non EGU trading program, right.

22 HEARING OFFICER STERNSTEIN: Okay. I guess at this point
23 if no one objects, let's recess for just five minutes but stay
24 convened just in case someone else from the public arrives late

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1 who has questions to ask. So we will go off the record right
2 now.

3 (Whereupon a short recess was taken.)

4 HEARING OFFICER STERNSTEIN: Okay. We are back on the
5 record now.

6 At this point, seeing that no one has any other questions
7 of the Agency, I am going to ask if the Agency anticipates that a
8 third hearing will be required?

9 MR. MESSINA: No, we do not.

10 HEARING OFFICER STERNSTEIN: Okay. I will be sending out a
11 Hearing Officer Order in the next few days to announce the
12 cancellation of the third hearing. Again, for the record, a
13 couple of deadlines for this rulemaking. The second notice will
14 be issued by the Board by no later than the December 21st, 2000
15 Board meeting. Assuming that JCAR timely submits a notice of no
16 objection, the final order should be issued by no later than the
17 March 1st of 2001 Board meeting.

18 Again, just for the record, does anybody present have any
19 other further comments on this Docket R01-11? Okay. Seeing

20 none, just a couple notes about the transcript.

21 MR. PETERSON: Excuse me.

22 HEARING OFFICER STERNSTEIN: Oh, I am sorry, Brooke. Go
23 ahead.

24 MR. PETERSON: Brooke Peterson with the Illinois

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1 Environmental Regulatory Group. I just want to take the
2 opportunity to thank the Agency staff for all of its hard work on
3 this regulation and working with the regulated community to come
4 up with these regulations. I understand this is part of a very
5 large package and has taken a lot of time and effort. I just
6 wanted to register that the Illinois Environmental Regulatory
7 Group members are generally supportive of this regulation. Thank
8 you.

9 MR. MESSINA: Thank you.

10 HEARING OFFICER STERNSTEIN: Thanks, Mr. Peterson.

11 BOARD MEMBER MELAS: We appreciate those comments.

12 HEARING OFFICER STERNSTEIN: Just a few notes about the
13 transcript. The transcript for this hearing should be available
14 before next Thursday, November 9th. That is three business days
15 after today and that's also taking into account that Tuesday,
16 November 7th is election day and also a state holiday.

17 If anyone would like a copy of the transcript, you can
18 speak to the court reporter directly. You can contact the
19 Board's clerk's office in Chicago for a hard copy, which is 75

20 cents a page, or the preferred and cheapest method is to download
21 the hearing from the Board's web site. That is
22 www.ipcb.state.il.us. The transcript should be posted on the web
23 site the week after next.

24 Public comments in this matter must be filed 14 days after

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1 the Board receives the transcript from the final hearing.
2 Considering that the transcript will be due by November 9th, the
3 public comment deadline will expire on November 23rd, 2000, but
4 that's Thanksgiving, so in actuality the comments should be in to
5 the Board by November 22nd. The mailbox rule will apply, though.

6 Anyone may file public comments with the clerk of the Board
7 and must provide the Board with an original and nine copies. You
8 must simultaneously deliver your comments to all persons on the
9 service list and include an attached notice sheet proof of
10 service and a copy of the current service list. If you are
11 filing public comments, please contact the clerk's office to make
12 sure that you have an updated service list. You can also contact
13 my secretary, Lynn Hughes, in Chicago.

14 That being said, that concludes today's hearing. Thank you
15 all very much for your time and attention. The hearing is
16 adjourned.

17 BOARD MEMBER MELAS: Thank you.

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) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

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5 I, DARLENE M. NIEMEYER, a Notary Public in and for the
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 16 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 3rd of November A.D.,
9 2000, at 600 South Second Street, Springfield, Illinois, In the
10 Matter of: Proposed New 35 Ill. Adm. Code 217, Subpart T, Cement
11 Kilns, and Amendments to 35 Ill. Adm. Code 211 and 217, in
12 proceedings held before Joel J. Sternstein, Hearing Officer, and
13 recorded in machine shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed
15 my Notarial Seal this 6th day of November A.D., 2000.

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Notary Public and
Certified Shorthand Reporter and

Registered Professional Reporter

19

CSR License No. 084-003677

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My Commission Expires: 03-02-2003

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