

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
 April 12, 2005

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3 IN THE MATTER OF:)
)
 4 PROPOSED AMENDMENTS TO) R05-19
 EXEMPTIONS FROM STATE PERMITTING) (Rulemaking-Air)
 REQUIREMENTS (35 ILL. ADM. CODE)
 5 201.146))

6

7 Transcript of proceedings held in

8 the hearing of the above-entitled matter, taken

9 stenographically by Stacy L. Lulias, CSR, before

10 Amy C. Antoniolli, Hearing Officer, at the

11 James R. Thompson Center, 100 West Randolph Street,

12 Room 9-34, Chicago, Illinois, on the 12th day

13 of April, A.D., 2005, commencing at 10:22 a.m.

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1 A P P E A R A N C E S:

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BY: MS. AMY C. ANTONIOLLI, Hearing Officer

9

MR. NICHOLAS J. MELAS, Board Member

10

MS. ANDREA S. MOORE, Board Member

11

MS. ALISA LIU, P.E., Technical Unit

12

-AND-

13

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16

BY: MR. THOMAS E. JOHNSON, Board Member

17

ALSO PRESENT:

18

MR. ROBERT W. BERNOTEIT, IEPA

19

MS. STEFANIE N. DIERS, IEPA

20

MS. LaDONNA DRIVER, Hodge, Dwyer, Zeman

21

MS. ANNET C. GODIKSEN, IEPA

22

MS. KATHERINE D. HODGE, IERG

23

MR. ALAN JIRIK, CHMM, CornProducts International

24

MR. CHARLES F. MATOESIAN, IEPA

25

MR. ROBERT A. MESSINA, IERG

26

MR. BRUCE NILLES, Sierra Club

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MS. VERENA OWEN, Sierra Club

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MS. PATRICIA F. SHARKEY, Mayer, Brown

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MR. DONALD E. SUTTON, P.E., IEPA

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1 HEARING OFFICER ANTONIOLLI: Good morning,
2 everyone and welcome to the Illinois Pollution
3 Control Board. My name is Amy Antoniolli and I have
4 been assigned hearing officer to this rulemaking.

5 The rulemaking is captioned in the
6 matter of Exemptions From State Permitting
7 Requirements 35 Illinois Administrative Code
8 201.146, which the Board has docketed R05-19.

9 In this proceeding, the Agency is
10 seeking to add four categories to the permit
11 exemption from State air permitting requirements in
12 Section 201.146 of the Board's air rules.

13 This rulemaking was filed on
14 February 22, 2005, jointly by the Illinois
15 Environmental Protection Agency and the Illinois
16 Environmental Regulatory Group.

17 The Board accepted the proposal for
18 hearing on March 17, 2005. Today is the first
19 hearing. A second hearing is scheduled for June
20 14th, 2005, to take place at ten in the morning in
21 the Board's offices in Springfield.

22 To my left is Board Member Nicholas
23 Melis, who is the Board Member assigned to this
24 matter. To the left of Member Melis is Member

1 Thomas Johnson, and to my right is Board Member
2 Andrea Moore. Also with us today is Alisa Liu from
3 the Technical Unit.

4 And if you'd like to testify today and
5 you haven't told me yet, please let me know. We
6 have today extra copies of the service list and the
7 notice list up here, and I believe Mr. Matoesian
8 from the Agency has extra copies of the proposal and
9 of the prefiled testimony that's been submitted
10 already in this rulemaking.

11 Today's proceeding is governed by the
12 Board's procedural rules. All of the information
13 that is relevant and not repetitious or privileged
14 will be admitted into the record.

15 We will begin with the testimony of two
16 witnesses that have prefiled testimony in this
17 matter, Ms. Katherine Hodge, on behalf of the
18 Illinois Environmental Regulatory Group, and
19 Mr. Donald E. Sutton, on behalf of the Illinois
20 Environmental Protection Agency, followed by any
21 questions for both of those witnesses.

22 Please note that any questions posed by
23 Board Members or staff are designed to help develop
24 a more complete record for the Board's decision and

1 do not reflect any bias. And then after that,
2 anyone else can testify regarding the proposal.

3 Like all witnesses, those who wish to
4 testify will be sworn in and may be asked questions
5 about their testimony. We'll conclude with a few
6 procedural items.

7 And before we begin, Mr. Melis, do you
8 have anything to add?

9 BOARD MEMBER MELIS: Just thank everybody
10 for coming, and we anticipate getting further
11 information on this proposal.

12 HEARING OFFICER ANTONIOLLI: We'll then
13 turn it over to the proponent for opening
14 statements, if any.

15 MR. MATOESIAN: Charles Matoesian
16 for the Illinois Environmental Protection Agency. I
17 would just like to say briefly, with me here today
18 is Mr. Don Sutton, manager of the permit section,
19 who will be testifying, but also Mr. Bob Bernoteit,
20 who is the FESOP/state permit unit manager in the
21 permit section, and he can answer any questions that
22 are available. And also, Annet Godiksen, who is
23 another attorney for the Agency is present as well.
24 But that's all I really wanted to mention.

1 HEARING OFFICER ANTONIOLLI: Okay, thank
2 you. Go ahead.

3 MS. DRIVER: I'm LaDonna Driver with
4 Hodge, Dwyer, Zeman, counsel for the Illinois
5 Environmental Regulatory Group. We are co-proponent
6 with the Illinois EPA.

7 We will be presenting testimony today
8 from Katherine Hodge, who is the executive director
9 of ERG. Also with us is Alec Messina, who is
10 general counsel for ERG, and Alan Jirik, who is the
11 director of regulatory affairs for CornProducts
12 International. CornProducts is a member of ERG, and
13 Alan is also on the executive committee of ERG and
14 has been involved in the discussions we've had to
15 date with the Illinois EPA on this proposal.
16 Mr. Jirik is not going to be presenting any
17 testimony per se, but is available to answer
18 questions that the Board may have from a facility
19 perspective.

20 HEARING OFFICER ANTONIOLLI: Okay, thank
21 you.

22 Now, why don't we start by having the
23 witnesses who have prefiled testimony and who intend
24 to testify be sworn in.

1 (Witnesses sworn.)

2 HEARING OFFICER ANTONIOLLI: And,
3 Mr. Matoesian, do you want to go ahead and start?

4 MR. MATOESIAN: Mr. Sutton will
5 present his testimony.

6 HEARING OFFICER ANTONIOLLI: And go ahead
7 and introduce yourself and give us a little
8 background and then you can go ahead and start.

9 MR. SUTTON: My name is Don Sutton. I'm
10 the manager of the permit section, the Bureau of
11 Air, Division of Air Pollution Control. I've had
12 that job since July of 1991. I'm basically
13 responsible for all the permits, construction
14 operating permits at issue for the Bureau of Air and
15 the State of Illinois. And I'm here today to
16 testify on behalf of this proposal.

17 Do I need to read this or --

18 MR. MATOESIAN: If you'd like.

19 MR. SUTTON: I'd rather not.

20 HEARING OFFICER ANTONIOLLI: You can give a
21 summary of it, and if you so choose, we can have the
22 prefiled testimony entered into the record as an
23 exhibit.

24 MR. MATOESIAN: Why don't we do that. If

1 you don't want to read the whole thing, we'll just
2 enter it as an exhibit then.

3 MR. SUTTON: In short summary, I would like
4 to have this just entered into the record, we have
5 four different exemptions.

6 Historically, we initially had
7 26 exemptions way back in the '90s of things that
8 were exempt from permitting. In Illinois, if you
9 have a unit that emits a criteria pollutant, you
10 need to get a construction permit prior to building
11 that emission unit and an operating permit to allow
12 you to operate it, unless that particular unit is
13 specifically exempt from regulation, so we initially
14 started out with 26 exemptions.

15 When the 1990 amendments to the Clean
16 Air Act came about, there was a requirement that
17 large sources get what is called a Title V Permit.
18 That's a federal operating permit. Under that
19 particular program, the USEPA identified a series of
20 what they called insignificant activities that did
21 not need to be addressed as part of that Title V
22 permit program.

23 We adopted into State law a list of
24 those insignificant activities under Section 210.

1 We then went back to our exemption list and took
2 some of the lessons learned from the insignificant
3 activities and brought them back and basically
4 expanded our 201.146 list at that time. And this is
5 now yet another attempt to add to those exemptions
6 in the hope of reducing the amount of paperwork we
7 have to process and taking some of the regulatory
8 burden away from the regulated entities.

9 HEARING OFFICER ANTONIOLLI: And
10 would you like to move to enter his prefiled
11 testimony into the record?

12 MR. MATOESIAN: Yes, I would.

13 HEARING OFFICER ANTONIOLLI: Does
14 anyone object -- and do you have extra copies?

15 MR. MATOESIAN: Yes, I do have extra
16 copies.

17 HEARING OFFICER ANTONIOLLI: Does
18 anyone object to entering Mr. Sutton's prefiled
19 testimony into the record as Exhibit 1?

20 And seeing none, I will mark
21 Mr. Sutton's prefiled testimony as Exhibit 1, and we
22 can proceed with Ms. Hodge's testimony.

23 MS. HODGE: Thank you.

24 MS. DRIVER: I just want to note one

1 thing for the record before Ms. Hodge begins.

2 She is going to read her prefiled
3 testimony into the record but wanted to note one
4 typographical error, which is on Page 3 of her
5 prefiled testimony, Section IV(b), the third line,
6 modification of an existing unit is less than 0.1
7 pounds per hour.

8 HEARING OFFICER ANTONIOLLI: Okay, we'll
9 note that.

10 MS. DRIVER: Thank you.

11 MS. HODGE: Thank you for the opportunity
12 to offer testimony in this proceeding today. My
13 name is Katherine Hodge, and I'm the Executive
14 Director of the Illinois Environmental Regulatory
15 Group, which I will refer to as ERG today.

16 I have served in that position since
17 early 2002, and prior to that, since early 1986, I
18 have been affiliated with ERG first as in-house
19 counsel and then an outside counsel for a number of
20 years.

21 ERG is an affiliate of the State
22 Chamber of Commerce, and over the last several
23 years, ERG has worked with the Illinois EPA to
24 identify potential areas where innovation and

1 improvements to environmental permitting would
2 assist both the State and the regulated community.

3 While ERG and the Illinois EPA continue
4 to work towards additional changes in the permitting
5 system, our talks to date have led to the proposed
6 rulemaking before the Board today.

7 I'd like to next provide just a little
8 bit of the historical overview of, you know, how we
9 got to this point.

10 This proposed rulemaking focuses on air
11 permitting, and it contains language agreed to by
12 both parties. I would like to describe for you the
13 background and research which led to the submittal
14 of today's proposal.

15 Data from Illinois EPA, originally
16 collected in calendar years 2002 and 2001, showed
17 that a large number of air permits were issued for
18 projects with low levels of emissions.

19 ERG also collected data from
20 surrounding Region V states regarding the numbers
21 and types of air permits processed in each state.
22 ERG has recently reviewed and updated this data and
23 has conducted an in-depth analysis of current laws
24 and regulations on air permitting in other Region V

1 states.

2 Our discussions with Illinois EPA and
3 our analysis of the data collected have led ERG to
4 conclude that the proposed changes in the Illinois
5 air permitting scheme are overdue, as I'll discuss
6 now.

7 Our initial investigation into the
8 nature of air construction permits issued in
9 Illinois uncovered a rather startling fact,
10 approximately 70 percent of all air construction
11 permits issued in calendar years 2000 and 2001 were
12 for projects with no emission increases or for
13 emission increases of less than one ton per year.
14 This finding indicated the potential for elimination
15 of a large percentage of such construction permits.
16 And the attached Exhibit 1 to my testimony shows a
17 summary of the permitting activities for these
18 two calendar years.

19 The major revelation from ERG's
20 research into the permitting schemes in other
21 Region V states is that these states have taken a
22 broad approach to streamlining. And the attached
23 Exhibit 2 provides a summary of air permit
24 streamline efforts in other Region v states.

1 For example, Indiana has de minimis
2 emission permit exemptions, categorical permit
3 exemptions, notice-only requirements for certain
4 types of changes, permits by rule, and so forth.
5 Note that the emission thresholds associated with
6 these various streamlining components are far higher
7 than those in today's proposed rulemaking.

8 Currently, Illinois is the only state
9 in Region V that does not have at least some form of
10 de minimis permit exemption. The proposal before
11 the Board today is a very moderate approach to
12 permit streamlining. While we cannot provide a
13 precise figure to the number of permits that will be
14 eliminated by this proposal, our prior research,
15 summarized in Exhibit 1, indicated that many permits
16 have the potential to fall within the proposed
17 exemptions.

18 It is clear from the data and from the
19 progress being made in surrounding Region V states
20 that Illinois must proceed with air permit
21 streamlining. As a first step, ERG and the Illinois
22 EPA have identified a number of minor source permits
23 whose elimination would have little or no
24 environmental impact. This proposal is directed to

1 those sources.

2 Today's proposal begins the process of
3 improving the Illinois air permitting system. The
4 proposal adds to the already-established list of
5 construction and operating permit exemptions by
6 establishing new permitting exemptions for:

7 A, new or replacement air pollution
8 control equipment in specified situations;

9 B, emission units which are replaced,
10 added or modified at FESOP facilities where the
11 potential to emit of the new unit or the increase in
12 potential to emit from the modification of an
13 existing unit is less than .1 pound per hour or .44
14 tons per year in specific circumstances;

15 C, emission units which are replaced,
16 added or modified at non-major and non-FESOP sources
17 where the potential to emit of the new unit or the
18 increase in potential to emit from the modification
19 of an existing unit is less than .1 pound per hour
20 or .44 tons per year, or less than .5 pounds per
21 hour with prior notice to Illinois EPA, again, with
22 specific circumstances;

23 And finally, D, CAAPP source
24 insignificant activities as already defined by

1 current CAAPP permitting rules.

2 The benefits from adoption of this
3 rulemaking for Illinois citizens, government and the
4 business community are many and varied. The first
5 benefit is that the rulemaking could actually lead
6 to improvements in the State's air quality by
7 freeing up the regulators to concentrate on permit
8 actions involving something more than minimal
9 emissions.

10 During our early discussions with
11 Illinois EPA, Illinois EPA noted that of the nearly
12 7,000 sources permitted by the Division of Air
13 Pollution Control, less than five percent of those
14 sources are responsible for a great majority of
15 Illinois' total air emissions. These figures make
16 it obvious that the regulators should focus on these
17 facilities to achieve the greatest environmental
18 benefits.

19 Adopting the proposed air permitting
20 exemptions will allow better allocation of Illinois
21 EPA resources, which are currently permitting many
22 minor emission projects. At the least, reducing the
23 number of permit applications required to be
24 reviewed by the Illinois EPA should help the

1 Illinois EPA more efficiently and more quickly
2 handle the remaining permit applications. This
3 reallocation of Illinois EPA resources is especially
4 crucial during the current period of State budget
5 constraints.

6 Because the emissions targeted by this
7 rulemaking for exemption are minor, there will be
8 little or no environmental impact from the change.
9 Projects that involve more than approximately .5 ton
10 of emissions, or 2 tons where prior notification is
11 given will not be impacted by this rulemaking.

12 Also, the proposal contains constraints
13 on utilizing the exemptions where such requirements
14 as New Source Performance Standards, New Source
15 Review and National Emissions Standards for
16 Hazardous Air Pollutants would be triggered.

17 The business community in Illinois will
18 also benefit from adoption of this proposal.
19 Improvements to the permitting process in Illinois
20 will allow businesses to start operation or change
21 production methods more efficiently, allowing them
22 to stay more competitive in today's global market.
23 Delays in permitting issuance frequently results in
24 financial losses. The streamlining of today's

1 proposal will allow businesses to make more timely
2 improvements, eliminating idle time and waste
3 involved in waiting on permit issuance, without
4 reducing environmental protection.

5 For the reasons discussed above, we
6 urge the Board to move forward expeditiously with
7 the proposed rulemaking. Although ERG hopes to
8 return with additional air permit streamlining
9 proposals in the near future, today's proposed rule
10 is a good first step in bringing Illinois in line
11 with neighboring Region V states and with the times.

12 Thank you very much. I'd be happy to
13 answer any questions.

14 HEARING OFFICER ANTONIOLLI: Thank you both
15 for the testimony you've provided.

16 Let's begin with questions for these
17 two witnesses.

18 BOARD MEMBER THOMAS: I had one for Kathy,
19 and I guess it falls into the category of there's
20 lies, damn lies and statistics.

21 BY BOARD MEMBER THOMAS:

22 Q. Your testimony was that the time
23 period of 2000 and 2001 that 70 percent of the
24 construction permits that were issued were issued

1 either for de minimis emissions or no emissions, my
2 question is, do you consider that, and based upon
3 your wealth of experience, to be an average -- is
4 that reflective of any average two-year time period?
5 I mean, you didn't go out and just pick 2000 and
6 2001 because you knew that those were when these
7 de minimis permits were issued?

8 BY MS. HODGE:

9 A. That's correct. And we started this
10 project probably about three years ago, and that was
11 the most current data available to us at the time,
12 and that's really what started our efforts here.

13 We did look at the information done,
14 and his staff were kind enough to send us an
15 electric version of their permit tracking, you know,
16 that had the different kinds of sources, you know,
17 we've separated them by CAAPP source, FESOP and
18 State operating permit sources. And then as to the
19 emission increases, the data also had, you know,
20 bi-pollutant information, too, so we just chose to
21 do a summary. That really led us to sit down with
22 our initial discussions with them and say, you know,
23 let's look at this and think about maybe a
24 reallocation of some resources.

1 Now, is that consistent, you know,
2 forward? We think so. Don might be more -- better
3 able to answer that question, but we believe that it
4 probably is.

5 MR. SUTTON: And again, if you would
6 allow me, I can throw more statistics onto your
7 statistics.

8 MR. THOMPSON: Certainly.

9 MR. SUTTON: Currently, we have --
10 and this was as of January -- I had to pull the
11 numbers together for a speech, we have 6,860 sources
12 in the state that have operating permits, okay, so
13 these are existing operating sources.

14 At that point in time, 790 of those
15 were classified as needing a Title V permit or what
16 we call Clean Air Act Program Permit or CAAPP. At
17 that time, there were 450 sources who had taken
18 federally enforceable limits, become a peace office,
19 Kathy mentioned in her testimony, to avoid Title V,
20 and we had 5,620 smaller source permits, or what we
21 call lifetime permits. So these are the people who
22 have emissions whose potential to emit don't make
23 them need a larger permit. So the vast majority of
24 the permits we have are at small sources, and that's

1 to be expected.

2 We have done some research on our own
3 as to see how this might impact our workload, and
4 currently -- those particular two years actually
5 were fairly good years for our economy and good
6 years for permitting. Permitting has dropped off a
7 little bit. We are probably now down into the range
8 of 1,800 to 1,900 permits a year that we issue, and
9 roughly of those, about 900 to 1,000 would be
10 construction permits, and the rest of them would be
11 operating permits. This does not include our
12 open burning permits. We issue about a thousand of
13 those a year, and that hasn't changed over time.

14 But out of that 900 to 1,000
15 construction permits, just looking back to our -- as
16 of July of '03, we have a fee structure for
17 construction permitting, so we went back and picked
18 up the people who would pay us the minimum amount of
19 fee as kind of a gauge as to who would fall in these
20 categories. And we had roughly, in Bob's group,
21 somewhere in the range between 120 to 150 permits a
22 year would probably fall out under this exemption,
23 and then add our Title V sources, we figured
24 somewhere between another 60 to 80 would fall out,

1 so we would guess somewhere in the neighborhood of
2 200 to 230 permits a year would no longer be needed
3 to issue because of this program. And that's our
4 best guess at this time.

5 BY BOARD MEMBER THOMAS:

6 Q. Nor would the fees be paid for those
7 permits?

8 A. Exactly. If I can continue on that
9 line, we kind of see those two efforts as a wash.
10 These are minimum fee payers. The minimum fee for
11 construction permits is \$500. And though these
12 particular permits do not take a great deal of time
13 to process as far as the permitting end goes, they
14 take the same amount of time for clerical work, same
15 amount of time to open up the envelopes, process the
16 checks, move the paper from point A to point B,
17 actually type up the permits and send them out. So
18 the clerical end doesn't vary much, it's the
19 engineering end that obviously differs on the amount
20 of time it takes to review these applications.

21 BOARD MEMBER THOMAS: Thanks.

22 HEARING OFFICER ANTONIOLLI: Yes? You want
23 to introduce yourself?

24 MR. NILLES: Sure. My name is Bruce

1 Nilles, and I represent the Sierra Club. I had a
2 couple questions for -- a series of questions for
3 Don Sutton.

4 BY THE NILLES:

5 Q. You testified that you started working
6 on this proposal about two years ago; is that
7 correct?

8 BY MR. SUTTON:

9 A. Well, Kathy and our director have
10 been after efforts to streamline permitting in all
11 sorts of fashions for an extended period of time. I
12 would say this one is probably at least three years
13 ago.

14 Q. And are you familiar with IERG?

15 A. Yeah, IERG and others.

16 Q. Who at the Agency has been involved in
17 this rulemaking?

18 A. Predominantly me and Bob Bernoteit.

19 Q. And who at the Illinois Environmental
20 Regulatory Group?

21 A. Kathy.

22 Q. Are you familiar with the Sierra Club
23 and other environmental groups in this state?

24 A. Yes, I am.

1 Q. Do you recall discussions last year
2 regarding the proposed rulemaking cleaning
3 up (inaudible), otherwise known as the 9-10
4 rulemaking process?

5 A. Yes, I do.

6 Q. And there was multiple meetings
7 between the Agency and the Environmental Public
8 Health Organizations before the Agency voted for
9 the proposal?

10 A. Yes.

11 Q. Did you have any meetings with any
12 environmental group before the proposals in the last
13 three years to discuss these issues?

14 A. I personally did not. This particular
15 spinoff of exemptions, actually, was introduced as
16 legislation last year, and at that point in time,
17 had exposure and written print. We did not make an
18 effort at that time, as I recall, to outreach to
19 environmental groups, nor did we at this point.

20 Q. Did you ever talk to any public health
21 organizations?

22 A. No.

23 Q. Have you ever proposed rulemakings
24 before without discussing it with other interested

1 parties from the industry?

2 A. I personally -- and this is probably
3 only the third rulemaking I have been involved with,
4 and I presume one of those were the air rulemaking,
5 which had extensive outreach, and the other one was
6 a trade secret rulemaking that I was involved in,
7 and we did an outreach for that to environmental
8 groups.

9 Q. Do you have any other ongoing
10 negotiations within the industry regarding other
11 potential loopholes with the air program?

12 A. I think I would take exemption as to
13 the word loopholes.

14 Q. Exemptions, other exemptions to that
15 program?

16 A. Yes, we have explored possibly taking
17 this farther, but those particular discussions
18 haven't evolved to the point where we'd like to take
19 them forward.

20 Q. How many staff do you have in the
21 permitting program?

22 A. Engineering, clerical, how would you
23 like it broken down?

24 Q. Total staff in the air program?

1 A. Well, on a good day, 54 people.

2 Q. And resources have been a serious
3 concern, particularly, since the Title V program
4 began back in 1990; is that correct?

5 A. Yes.

6 Q. Do you recall the Agency in 1991 doing
7 a workload analysis estimating how much resources
8 you need to run a permitting program between 1992
9 and 1997?

10 A. Yes, I do.

11 Q. And do you recall that that indicated
12 the Agency needed about 330 employees and about a
13 budget of \$25 million to run the program?

14 A. I don't recall the total Agency
15 numbers. I know the permit numbers at one time were
16 somewhere estimated between 70 and 80 to run the
17 total program for permit signing.

18 Q. Well, I can perhaps refresh your
19 memory. It's --

20 A. I'm not disagreeing with you, but I'm
21 just saying I'm more familiar with the permits
22 amount.

23 HEARING OFFICER ANTONIOLLI: Are you moving
24 to introduce this into the record?

1 MR. NILLES: Just to refresh his memory
2 first.

3 MR. SUTTON: I'm not disagreeing with
4 the numbers.

5 BY MR. NILLES:

6 Q. So the Agency estimated in 1991 that
7 it needed 330 employees and budget of about
8 \$25 million, as on Page 2 of the executive summary?

9 A. Yes.

10 HEARING OFFICER ANTONIOLLI: Can you
11 explain to us what -- even if you're not introducing
12 it into the record where you're looking?

13 MR. NILLES: I'm sorry. On Page 2.

14 HEARING OFFICER ANTONIOLLI: And what's the
15 title of the document that you're --

16 MR. NILLES: The document is a report
17 prepared by the Illinois Environmental Protection
18 Agency, Air Pollution Control Division, it's called
19 Workload Projection and Resource Estimates for FY-92
20 through FY-97.

21 HEARING OFFICER ANTONIOLLI: Okay, thank
22 you.

23 BY MR. NILLES:

24 Q. In executive summary, Page 1, it

1 describes a breakdown of fiscal year total staff
2 employment estimate in order to run the clean air
3 program.

4 Has IEPA ever received close to the
5 number of staff and resources?

6 A. Again, I'm not an expert on Agency
7 staffing and bureau staff, for that matter, but we
8 obviously didn't -- staff never approached those
9 types of numbers. Personally, I can think -- well,
10 my best guess is the highest number we had on the
11 Division of Air Pollution side, this doesn't count
12 the vehicle emissions side, it probably was in the
13 neighborhood of 170 people.

14 Q. Do you recall in 1996 the legislature
15 further reduced your fee-generating authority by
16 reducing the minimum fee for a FESOP from a thousand
17 bucks to a hundred bucks?

18 A. Yes.

19 Q. And it resulted in a loss of about
20 \$900,000 from the Agency's permitting budget?

21 A. Yes.

22 Q. Compared to what the Agency estimated
23 in 1991, before 2003, the Agency had about
24 10 million annually generated from Title V and other

1 operating permits; is that correct?

2 A. Had I known you were going this
3 particular direction, I would have brought somebody
4 more versed in our financial situation. I can only
5 assume you've got some source of the numbers.

6 Q. In 2003, the legislature raised fees
7 for various sources of air pollution; is that
8 correct?

9 A. That's correct.

10 Q. Various construction and operating
11 permits?

12 A. That's correct.

13 Q. But some of that increase was offset
14 by additional burdens that the Agency -- or
15 additional outlays the Agency incurred that had
16 previously been funded by general revenue; is that
17 correct?

18 A. Well, in regards to Title V fees, the
19 Title V fees by their very nature, had to be spent
20 to fund the Title V sources, so there were no
21 general refunds there. We had fees -- in the permit
22 section, we have a permit inspection fund that also
23 is for those sources not covered by Title V fees.
24 We have state operating fees. So the permit section

1 itself was pretty well funded from either the
2 Title V program for those people working on Title V
3 sources and the permit inspection fund for those
4 that weren't.

5 There are other portions of the
6 Division of Air Pollution Control that were funded
7 from general revenue. The permit section itself was
8 pretty well funded by the permit inspection fees.

9 Q. Your testimony is the Title V fees
10 were adequate to cover the needs for the Title V
11 operating permits?

12 A. No. My testimony is, the source of
13 revenue for my people working for me was from the
14 Title V program, that's my testimony.

15 Q. And that has never been adequate; is
16 that correct?

17 A. Well, I guess you'd have to define
18 adequate. But we have not ever exceeded --
19 approached the numbers that we had originally
20 projected, no.

21 Q. What was the deadline of the Agency to
22 issue all of the Title V permits?

23 A. Well, the legal deadline was
24 three years after the installation of the program,

1 so we were supposed to get the applications in '95,
2 the same year issue a third of those than we should
3 in '96 and '97. So the end of 1997, we should have
4 issued, in theory, by federal mandate, all the
5 permits.

6 Q. By 1998?

7 A. Yes. Well, January of 1999.

8 Q. Has the Agency issued all of its
9 Title V permits yet?

10 A. No, we still have roughly 30-some
11 outstanding.

12 Q. With the passage of, in 2003,
13 additional funding, was the Agency able to hire
14 additional staff?

15 A. No.

16 Q. So despite an increase in fees, the
17 Agency hasn't been able to move forward and hire
18 additional engineers and other people to administer
19 the program?

20 A. Right. And I think that was just
21 basically overall hiring fees within the State of
22 Illinois.

23 Q. You testified that the loss of revenue
24 associated with these exemptions was a wash?

1 A. Yes.

2 Q. Have you done that analysis in terms
3 of resources? Is there anything in writing that
4 says, here's how much we spend on permitting, these
5 are the results versus how much money we take in?

6 A. We have not got an equation that you
7 could plug in to calculate that out. When we
8 actually went in for a fee structure in July of '03,
9 we did some preliminary investigations and basically
10 concluded those particular construction fee levels
11 were appropriate to cover the cost of administrating
12 those types of actions. So, in theory, \$500 would
13 cover the cost of paper processing of that type of
14 permit.

15 Q. Can you explain how the Agency would
16 consult in a more efficient use of Agency resources?

17 A. Yes, because now I have -- while I
18 issue roughly 1,900 permits a year, I have, at any
19 one time, a 900 to a 1,000 permit backlog, and so
20 the hope is that I can then reduce the processing
21 time for the existing permits I have as a backlog by
22 diverting staff from these permits to those permits.

23 Q. You testified you thought about 100 to
24 230 permits would be exempt under this proposal, do

1 you know what kind of sources those are?

2 A. Well, yeah, a rough breakdown is the
3 150 are the ones that Bob processes, and he issues a
4 construction -- his unit issues construction permits
5 for the smaller sources and the FESOP sources, and
6 his review of that basically concluded to be about
7 150 a year roughly, in that neighborhood.

8 Chris Romaine, his staff, at least a
9 portion of his staff, issues construction permits
10 for Title V sources, and he's the one who came up
11 with the 80 figure for Title V sources.

12 Q. Do you know what type of industrial
13 category we're talking about that would be exempt?

14 A. All of them.

15 Q. This would include medical waste
16 incinerators?

17 A. Well, when you say, include medical
18 waste incinerator, a source that has a medical waste
19 incinerator can have a Title V permit and could add
20 additional units at that source not related to the
21 incinerator that may be impacted by it, so again,
22 how you frame your question, you will not be able to
23 modify medical waste incinerator on the rule, but
24 you could add another unit at a hospital that may

1 not have anything to do with the incinerator that
2 would be allowed, and the only reason that
3 particular hospital has the Title V permit is
4 because of the medical waste incinerator, so again,
5 I have to understand your question.

6 Q. Could you make any changes to an
7 incinerator on any of these exemptions,
8 particularly, a replacement of the air pollution
9 controls?

10 A. Well, to that end, yes, you could.

11 Q. Thank you.

12 Do you know if any of these
13 sources are not intended areas?

14 A. Yes, I assume several of them are.

15 Q. Are you aware that the Agency is
16 under a federal obligation to come up with a plan
17 for the State to meet the new eight-hour ozone and
18 fine particulate standard; is that correct?

19 A. Yes.

20 Q. And right now, we violate both the
21 eight-hour ozone standard and the fine particulate
22 standard in the Greater Chicago area and the metro
23 east; is that correct?

24 A. That's correct.

1 Q. At this point, the Agency hasn't
2 determined how it's going to meet those standards;
3 is that correct?

4 A. Right, that's correct. Predominantly
5 because the USEPA hasn't come out with guidance to
6 tell you how to put together your plan yet, but
7 that's slowed us down a little bit.

8 Q. Do any of these sources contribute
9 either the precursors or the pollution that causes
10 nonattainment with either ozone or fine particulate
11 standards?

12 A. I would say to a very minimal degree,
13 yes, they would have to.

14 Q. Has the Agency done any analysis as to
15 whether these sources that they're proposing to
16 exempt are controversial sources, that is, where
17 there has been a controversy in the past either from
18 the neighbors or elected officials?

19 A. Again, because this covers a whole
20 range of permitting sources, I mean, in theory, you
21 could say this affects, to a certain degree, 6,000
22 sources, all having -- to decide which ones may or
23 may not be controversial.

24 Q. These exemptions will eliminate the

1 opportunity for the public to receive notice and
2 comment on these proposed permits; is that correct?

3 A. These will -- well, for our smaller
4 source permits, which are the predominant number of
5 these permits that we issue, there is not a
6 requirement for public notice for those particular
7 permits that we issue currently.

8 Q. Are any of these proposed exemption
9 sources that are currently subject to -- do any of
10 these construction and operating permit exemptions
11 currently require public notice or any public
12 participation? Let me rephrase it.

13 Do these exemptions eliminate
14 situations right now where the public has an
15 opportunity to participate in the issuance of either
16 the construction or operating permits?

17 A. Well, the way we have structured it, I
18 would think not, because you cannot trigger a PSD
19 permit, a new source review permit, a new source
20 performance standard permit or a NESHAP permit, so
21 no federal permit by the way that we have structured
22 this is that these are all below all federal
23 requirements, so I would not see a need for having a
24 public notice for any of these types of permits,

1 historically.

2 As Bob has just pointed out to me
3 also, we deliberately put in here that these current
4 sources have to be in compliance. Again, that was
5 an attempt to try to address the controversial
6 nature of those particular permits. People who are
7 in compliance can still be controversial, obviously,
8 but to a less degree than the people -- what we are
9 trying to get here are small sources who had maybe
10 create-nuisance conditions in the recent past would
11 not be able to benefit from these types of
12 exemptions.

13 Q. Are you familiar with the Evanston
14 medical waste incinerator?

15 A. No.

16 Q. Are you familiar with the controversy
17 last year about the Evanston medical waste
18 incinerator?

19 A. Well, I don't know if I am familiar
20 with Evanston in itself, but medical waste
21 incinerators are generally not viewed as polite
22 neighbors, so I would assume it would have people
23 who are not in favor of them. So I'm not disputing
24 that Evanston may have had people who weren't happy

1 with it.

2 Q. Do you recall whether that facility
3 was technically in compliance or not?

4 A. As far as I know, we had no
5 outstanding enforcement actions against them.
6 Again, I'm the permit section, but I don't recall
7 any enforcement action against them.

8 Q. Turning to the requirements that the
9 exemption is only available if its source is in
10 compliance, why is it important that the sources
11 operate in compliance before you grant them an
12 exemption?

13 A. I think all sources ought to operate
14 in compliance.

15 Q. Let me try the question again.

16 Why is it relevant in establishing
17 an exemption for a particular facility whether or
18 not there's been any compliance for the previous
19 year?

20 A. Well, again, I think these things are
21 aimed at two sources, one, you have the permitted
22 source, so you have to have some history with us,
23 which I think is important because we have,
24 obviously, a lot easier time dealing with people who

1 are used to working with the system; and two, to a
2 level that they are in compliance shows a light bit
3 of faith on their part to make sure they're adequate
4 in determining and evaluating each particular
5 exemption. I would think it's just a good idea.

6 Q. So it's important that they're in
7 compliance?

8 A. Again, I think it's important that all
9 sources be in compliance.

10 Q. Including the sources proposed here
11 today?

12 A. Yes.

13 Q. How will I get EPA compliance?

14 A. We have our own enforcement section
15 who keeps records of the compliance status, all of
16 these things, so we track people.

17 Q. And their compliance status?

18 A. Now, are you saying if somebody
19 doesn't come to me how am I aware of that? That we
20 would have to find out through a field inspection.

21 Q. Are you proposing to conduct a field
22 inspection prior to granting any of these
23 exemptions?

24 A. Well, first you got to understand how

1 the exemptions work. People do not write to me and
2 ask for an exemption. Once the exemption is on the
3 books, people then read the exemption and follow
4 that exemption and record in their own records where
5 they're at within that exemption. You do not write
6 to me and say, Don, I want to take advantage of this
7 ticket exemption.

8 Some cases people say, we're
9 anticipating a project, would it fall under this
10 exemption, and we would then respond in writing if
11 asked. But the whole point here is to avoid the
12 processing of permits.

13 Q. So how will you determine compliance?

14 A. Again, how we would determine
15 compliance is if at such time the field inspection
16 occurs, and we're not suggesting we're going to
17 inspect these people, but I guess the most likely
18 scenario, if you want to use that term, Bruce, would
19 be, should we have a complaint at a source, we would
20 follow up on complaints. Should the field person
21 show up, he then analyzes not just the source of the
22 complaint, but takes an inventory of what's there.

23 Obviously, if that inventory is
24 different than what we have on record, then he would

1 then determine whether that particular piece of
2 equipment, by asking the source or his own knowledge
3 is would it be exempt. If it's not exempt, then he
4 would find him in violation. If it is exempt, he
5 may or may not add it to his particular information
6 database on that source depending on the inspection.
7 But that is how he would then determine the units
8 that are at that source are properly being
9 regulated.

10 To the extent somebody relies on one of
11 the exemptions, it says that its emissions are less
12 than .1 pound per hour or .44 tons per year, they
13 would have to have records to confirm that, be it
14 manufacturer's guarantee, whatever, some method of
15 determining that they have -- they are inputting
16 compliance with that particular exemption, if that's
17 what they're relying on to avoid permitting, so it
18 brings that obligation to the source.

19 Q. So the obligation is on the source to
20 determine whether or not it's in compliance, and
21 therefore, it's eligible for this exemption?

22 A. Exactly.

23 Q. How often do you inspect minor
24 sources?

1 A. We do not routinely inspect any minor
2 sources. Both of our staff is devoted to inspecting
3 Title V sources, and, to a certain extent, FESOP
4 sources. We probably visit, I would guess -- and
5 again, permits, not FOS, we probably inspect
6 somewhere in the neighborhood of 8 to 900 small
7 sources a year just based on complaint follow-up.

8 Q. So that's about one every six years?

9 A. Well, I could safely say that there
10 could be sources out there we haven't gone to in ten
11 years because they have no complaint history.

12 MR. MATOESIAN: Well, I don't like
13 that type of speculation. Perhaps we could have
14 better numbers at the second hearing on that --

15 HEARING OFFICER ANTONIOLLI: And if you'd
16 like to pose your question for the record that the
17 Agency may be able to better answer that at the next
18 hearing?

19 MR. NILLES: The frequency in which
20 minor sources are expected and then a follow-up on
21 Don's question, which is, are there some minor
22 sources that have never been inspected or what's the
23 greatest length of inspection time frame we've seen
24 for minor sources in Illinois.

1 MR. MATOESIAN: Okay.

2 BY MR. NILLES:

3 Q. When the rule says, in short
4 compliance, does that mean compliance with air
5 requirements, water requirements, any environmental
6 requirements, any local zoning requirements, what
7 does it mean?

8 A. These particular rules are specific to
9 air.

10 Q. So if they have a terrible
11 environmental record for other media, i.e., waste or
12 water, IEPA would say that that source is eligible
13 for exemption under the air program?

14 A. As this rule is written, yes. Again,
15 history would suggest if they have those types of
16 problems, they don't limit themselves to just one
17 media, so air, land and water, either they are or
18 they aren't.

19 Q. Does it include intermittent
20 compliance?

21 A. This suggests that they had to be in
22 compliance in the last year.

23 Q. If they have a violation on one day in
24 the last year, does that mean they are no longer

1 eligible for any of the exemptions?

2 A. As written, this says they're not
3 subject to a noncompliance advisory, 114 request, a
4 violation notice or compliance equipment agreement,
5 administrative order, or civil or criminal
6 enforcement action. So they had to have had -- the
7 Agency would have to have taken some level of
8 enforcement action against them.

9 We would not have knowledge to the
10 length and degree that you're talking on continuous
11 compliance, nor do we ask that level of commitment
12 other than for Title V sources.

13 The only true test of that would
14 be for Title V sources who have to provide annual
15 compliance certifications. To the extent where
16 those would certify a noncompliance, it doesn't
17 happen much, but if they certify a noncompliance,
18 that would have an impact on these rules.

19 Q. The list you just described, did that
20 include self-disclosure violations?

21 A. No, these are all Agency actions.

22 Q. So if a source says, I violated my
23 permit, it's still eligible for permit exemption?

24 A. Well, to the extent that happens,

1 which I would say would be extremely rare, we would
2 then follow up on that to determine if there is a
3 need to take follow-up action. If somebody tells us
4 they're out of compliance, historically, we would
5 then go back and pursue that, and so that should
6 lead to one of these.

7 Q. Are you familiar with the coal fire
8 complex (phonetic) owned by Midwest Generation in or
9 around Chicago?

10 A. Yes.

11 Q. Are you aware that they regularly
12 report they violate the hazardous standards?

13 A. I know they regularly report they have
14 exceedences from their CEMs.

15 Q. In the five years -- in the history of
16 the clean air program, has the State ever taken an
17 active enforcement case against Midwest Generation
18 for ongoing violations?

19 MR. MATOESIAN: I'm not sure this is
20 relevant.

21 HEARING OFFICER ANTONIOLLI: I'll note your
22 objection for the record.

23 Mr. Nilles, you can continue, and
24 Mr. Sutton can answer the best he can.

1 BY MR. NILLES:

2 Q. Turning to the issue of hazardous air
3 pollutants, the proposed rule would exempt sources
4 based on the percentage of hazardous air pollutants,
5 raw materials and fuel; is that correct?

6 A. Yes, it's correct for the FESOP
7 sources.

8 Q. Is dioxin decay a hazardous air
9 pollutant?

10 A. Yes, it is.

11 Q. Is it ever present in the raw
12 materials of fuel?

13 A. Ever? I would assume to some very,
14 very small fraction.

15 Q. Are you aware of dioxin ever making up
16 .1 percent of a fuel or raw material?

17 A. I don't know if we are or not.

18 Q. Dioxin is a known carcinogen, right?

19 A. Yes.

20 Q. And the governor announced a coalition
21 to shut down medical waste incinerators because of
22 the large source of dioxin; is that correct?

23 A. Yes.

24 I would like to, I guess, expound

1 on the fact that the limits for fighting FESOP
2 sources are uncontrolled at a rate of less than .1
3 pound per hour, and that the percentage by weight of
4 the hazardous pollutant can only be .01 percent of
5 that .01 pound -- excuse me. .01 percent, .1 pound,
6 so again, you're talking a very, very small number.

7 Q. Does the Agency measure dioxin in
8 parts per billion or parts per trillion?

9 A. The Agency doesn't measure dioxin.
10 We have no monitors. We don't measure. The
11 calculations that come from dioxins and pure ions
12 are based on the non-fuels that burnt, and again, as
13 you say, through whatever percent, although
14 fractional, that this might be creating. Again,
15 these are very small units that we're talking for
16 exemption, and I, to my recollection, would not know
17 how you get dioxin purines out of them, but you can
18 theorize anything you want.

19 And again, you seem to be fixated
20 on medical waste incinerators, which, by law, have
21 to be Title V permitted sources, so they're not
22 covered by these particular set of exemptions. They
23 are similar exemptions and under insignificant
24 activities that already cover those have already

1 been in place, so this doesn't add anything to those
2 particular exemptions.

3 Q. Are you aware of -- what I'm getting
4 at is that there are a lot of hazardous air
5 pollutants that are not in the raw materials, all of
6 the fuels, but are a byproduct of violent combustion
7 or the chemical process involved at the source.

8 And so an exemption based on what
9 is in the raw material on fuel fails to recognize,
10 and dioxin is one of the best examples, that what
11 comes out of the stacks is not the chemical that was
12 in the fuel because of the chemical reaction that
13 occurs during the combustion process?

14 A. Yes. But again, you're talking very
15 small units, very small exemptions, so your theory
16 is correct, but in practical use, I don't see that
17 usually occurring. You give me an example where you
18 think somebody would burn a fuel that they're
19 allowed to burn, because, again, this only would
20 cover conventional-type fuels. Obviously, you can't
21 come up on hazardous waste incinerator and follow it
22 under these rules because they would be coupled by
23 other regulations.

24 So you're going to take a

1 conventional fuel and burn it in a very small device
2 and then create a concern that isn't currently being
3 addressed by either state or federal government, so
4 I'm not sure where you're heading with your line of
5 questioning.

6 Q. Let me ask the final question on the
7 issue of -- are you aware of any source in the state
8 where dioxin makes up, including major sources, more
9 than 0.01 percent by waste?

10 A. No.

11 Q. Are you aware of arsenic ever making
12 up more than 0.01 percent of waste?

13 A. Me personally, no.

14 Q. Thank you.

15 Switching gears, on March 23rd,
16 2005, the EPA proposed exempting five industrial
17 categories from obtaining Title V sources, including
18 dry cleaners, degreasers and secondary aluminum
19 smelters, has the Agency considered how this
20 proposal intersects with what USEPA is proposing?

21 A. Well, the USEPA is currently proposing
22 to exempt what they would call area sources from
23 their national emissions standards or hazardous air
24 pollutants. They have deferred covering these

1 particular permits since the inception of Title V
2 and now they've made that permanent. So these
3 particular deferrals have just continued their
4 practice since the initial start of that program.
5 They still need state permits to an extent, they're
6 not covered by exemption.

7 Q. Do you have any view as to what the
8 EPA is proposing affects the 230 permits you believe
9 may be exempt under the proposal?

10 A. Well, I said this -- they're
11 continuing that historic practice on keeping these
12 as area sources, so we have not permitted those
13 Title V sources in the past, so I don't see any
14 particular change in our permitting strategy based
15 on those particular deferrals being made permanent.

16 Q. Did the Illinois EPA conduct its
17 assessment of what other states are doing, or did it
18 just rely on what IERG has prepared?

19 A. We did our own.

20 Q. And where is that?

21 A. We didn't elect to put it in the
22 testimony. ERG did a pretty good job of summarizing
23 that. Bob and I just recently went to Wisconsin to
24 spend two days with them because they're expanding

1 their exemptions list, and we also met with the lady
2 who was there for the same reason from Minnesota.
3 Minnesota has no less than 12 different particular
4 permitting functions to allow people to either avoid
5 or reduce their permitting. So we know we are more
6 conservative in Illinois than the other Region V
7 states, which would include Ohio, Indiana, Michigan,
8 Wisconsin, Illinois and Minnesota.

9 Q. On the issue of Minnesota, does
10 Minnesota have any areas that violate federal Air
11 Quality Standards?

12 A. Not that I'm aware of.

13 Q. You mentioned Wisconsin, the operative
14 word is that they are exploring exemptions; is that
15 correct?

16 A. Well, they were mandated by their
17 legislature to come up with systems to improve their
18 permitting times and to reduce they're permitting.
19 So I think it's, I would say, a pretty good
20 indication that they'll come up with something.

21 Q. Are you aware that USEPA has sent a
22 letter conveying substantial concerns about that
23 legislation?

24 A. No.

1 Q. Are you aware that before a state can
2 adopt an implement a rule, it has to be approved by
3 USEPA?

4 A. Yes, I am.

5 Q. So EPA is the final arbiter as to
6 whether these comply with the Clean Air Act?

7 A. Correct.

8 Q. Have you had any discussions with the
9 USEPA?

10 A. No. These particular levels are all
11 well below what other people have in their SIPs, so
12 we don't anticipate having any particular problems
13 getting them approved by the USEPA. And those are
14 states that all have nonattainment areas, so again,
15 we feel that, as ERG has pointed out, we are a
16 little more conservative than the states in the
17 area, and so to that extent, if they deny our SIP,
18 they would have to basically state to us why they
19 would allow that in other states.

20 Q. Are you aware of any differences that
21 have occurred in the last couple years between --
22 let's try that again.

23 In the last two years, the USEPA
24 has redesignated large areas of each of the five

1 region states with the exception of Minnesota as
2 nonattainment with the eight-hour ozone and fine
3 particulate standard; is that correct?

4 A. I'm not sure the eight-hour was that
5 much greater than the one-hour, but the PM 2.5 is
6 obviously numerous and greater.

7 Q. Are you aware of any of these
8 permitting exemptions that have been approved by
9 USEPA subsequent to the designations of all these
10 new nonattainment areas?

11 A. I'm not aware of any. Most of these
12 have been longstanding. Again, I seriously doubt
13 the states are going to go back and undo their
14 exemptions as part of the compliance plan.

15 I think one thing, since you seem
16 to be going down this road, keep in mind, based on
17 allowable permitted levels, roughly the largest
18 five percent of our sources emit 95 percent of our
19 air pollution, and that's across the board, and
20 those are all the same precursors that you're
21 concerned about for PM 2.5 and for ozone.

22 Any state's compliance plan or a
23 plan to bring their areas back into compliance will
24 be focused on those large sources. Obviously, it

1 makes a little sense. The fact that we do not
2 regulate these particular sources do not mean they
3 go unaccounted. The USEPA, when you put together an
4 inventory, have what they call stationary sources,
5 which historically are the ones covered by the
6 permits, level sources and area sources. So even if
7 we don't have permits for very small sources, the
8 USEPA still puts in the inventory an allocation for
9 those emissions from those sources. So, again, they
10 don't go unaccounted for in the overall mix, if you
11 will, of emissions and how they control into the
12 future.

13 Q. You mentioned that five percent of the
14 sources cause about 95 percent of the air pollution;
15 is that correct?

16 A. I said that based on their allowable
17 emissions, as we put them in our report, 95 percent
18 of those emissions based on allowable sources are
19 based on those top five. If you go on actual
20 emissions reported, it's the top 15 percent.

21 Q. That's for the pollutants that
22 cause --

23 A. Those are all criteria, correct.

24 Q. That does not include hazardous air

1 pollutants, correct?

2 A. Again, it would not, but majority of
3 the -- I think we're down to 186 now hazardous air
4 pollutants, the bulk of those are also regulated as
5 either volatile organic materials, particulate
6 matter or some other fashion. So they're over --
7 they're counted as particulate matter or a VOM. And
8 in the rare case where you have a hazardous air
9 pollutant that is not otherwise regulated would be
10 like an acid gas. And so we -- those emissions that
11 you control would be counted in our inventory. We
12 don't double count them, if you will.

13 Q. With the exception of acid gases?

14 A. Right.

15 Q. Does Chicago and the metro east area
16 have problems with levels of hazardous air
17 pollutants?

18 A. How do you define problems?

19 Q. Exceeding the EPA's risk of one in a
20 million cancer?

21 A. Well, I don't know if I've seen the
22 USEPA's listings of that, but they have a program to
23 address hazardous air pollutants, which is two
24 parts. First, for the maximum available control

1 strategy for sources in any one of the 172 source
2 categories, and then going back into the risk
3 assessments to determine if there's additional need
4 to control hazardous air pollutants. The Illinois
5 strategy, if you will, is basically to follow the
6 federal standards.

7 Q. Let me try that again.

8 Do you consider hazardous air
9 pollutants a problem in the Greater Chicago metro
10 east area?

11 A. Again, I would suggest -- I'm the
12 permit section manager, I'm not the one that would
13 address that particular issue.

14 Q. Does this rulemaking propose to exempt
15 certain sources of hazardous air pollutants?

16 A. At very small sources, yes. It
17 doesn't prohibit them.

18 The USEPA's, I guess, level of
19 concern trigger for Title V sources is that you have
20 to emit or have the potential to emit annually ten
21 tons of any one pollutant or a combination of
22 25 tons of all of those 186. That makes you a major
23 source for hazardous air pollutants in the federal
24 program.

1 To take advantage of the ability
2 to issue hazardous air pollutants as an area source,
3 obviously, you've got to be well below the major
4 source threshold and you have to be in a category
5 thus not covered by a new source performance
6 standard or a NESHAP. So to the extent one of those
7 exist, yes, you have the ability to have increases
8 in hazardous materials.

9 Q. Are you aware of any sources to date
10 that emit more than ten tons of mercury per year?

11 A. No.

12 Q. Do we have a serious mercury problem
13 that exists?

14 A. I think you've answered your own
15 question. One, there is a concern, but there's
16 no -- there are -- nobody in this range can permit
17 mercury to any great degree. Why would you assume
18 somebody in a small area source would immediately
19 have a mercury emission they historically have not
20 had?

21 Q. Are any sources of mercury?

22 A. Not that I'm aware of, but, again, I
23 don't think they would necessarily handle mercury to
24 the extent that mercury might be a contaminant

1 byproduct.

2 I mean, we have -- in the FESOP
3 sources, we have this .01 percent by weight, we do
4 not have that for the various small sources. I
5 mean, I can't envision where you're going have --
6 these types of sources have mercury emissions
7 because these aren't historically the types of
8 sources that have that.

9 Q. Could we ask that that be an issue
10 that the Agency address at the next hearing?

11 A. Yes.

12 Q. Are any of these sources sources of
13 mercury?

14 A. Yeah, I think that would be good.

15 Q. Are you aware that Illinois has a
16 statewide fish consumption advisory because of high
17 level of mercury in every lake, river or stream,
18 including Lake Michigan?

19 A. Yes.

20 Q. A very small amount of mercury can
21 contaminate a water body; isn't that correct?

22 A. I assume.

23 MR. MATOESIAN: That's really a question
24 for the Bureau of Water, not the Bureau of Air.

1 HEARING OFFICER ANTONIOLLI: Okay.

2 BY MR. NILLES:

3 Q. The last issue is, would it be
4 possible for the Agency to provide an updated list
5 as to update -- let me back up.

6 Are you familiar with attachment
7 Exhibit 1 to Ms. Hodge's prefiled testimony?

8 A. Yes.

9 HEARING OFFICER ANTONIOLLI: Actually,
10 we haven't yet entered Ms. Hodge's prefiled
11 testimony into the record yet, would you like to
12 move at this time to do that before we --

13 MS. DRIVER: I would.

14 HEARING OFFICER ANTONIOLLI: And I have a
15 copy of it in front of me.

16 Does anyone object at this time to
17 entering Ms. Hodge's prefiled testimony into the
18 record as Exhibit 2?

19 And seeing none, I will mark that as
20 Exhibit 2, and you can go ahead and ask questions
21 about it.

22 BY MR. NILLES:

23 Q. Is it possible for the Agency to
24 update the 2000, 2001 number in Exhibit 1?

1 A. Yes. I think we would have the
2 information through -- solid through December of
3 '04.

4 Q. The Agency is close to finalizing all
5 of its Title V permits; is that correct?

6 A. That's correct.

7 Q. So this table is going to look very
8 different from what it did in 2000, 2001; is that
9 correct?

10 A. Well, I think you got to understand
11 this table. It will -- first of all, the operating
12 permits are the operating permits. They're ongoing.
13 The number of construction permits that we issue
14 Title V sources varies over time. The number of
15 Title V permits we issue are now into renewals, so
16 I'm not sure there's going to be a huge number.

17 Where do you envision a change?

18 Q. The Agency is almost done issuing all
19 of it's round one of Title V permits; is that
20 correct?

21 A. Right.

22 Q. In 2000 and 2001, the Agency issued
23 approximately 882 Title V permits?

24 A. No.

1 Q. Excuse me. Can you tell me what
2 Exhibit 1 says then?

3 A. Well, that -- what I was trying to --
4 we issued -- we had operating permits for these
5 existing sources, so the operating -- that's this
6 particular table, and we can present this in a
7 different fashion when we update. These are
8 existing sources.

9 What I propose we could bring at the
10 next hearing is the number of construction permits
11 we issued by category and the number of operating
12 permit modifications, if you will, be it new or
13 renewal or revised, and we can provide that
14 information. And that may provide a little level of
15 clarity.

16 This was basically how we provided --
17 they asked for the information, that is how we
18 provided it. But, like I said, we issue roughly
19 somewhere in the neighborhood of 1,800 permits a
20 year -- permitting actions, if you will, and that's
21 a breakdown we can provide.

22 Q. My last question is, did the Agency
23 consider exempting specific types of industrial
24 sources rather than broad brush based on emissions?

1 A. Well, historically, that is an
2 approach we've taken. What this particular attempt
3 was to do was basically bring parity for the FESOP
4 sources and maybe a little bit beyond for the
5 smaller sources to what is already allowed under
6 Title V sources under insignificant activities.
7 The non-HAP emissions and CAAPP sources are
8 insignificant if they're less than one pound an
9 hour. If hazardous is less than .1 an hour, and
10 they have the ability to write their own, you can
11 raise that higher.

12 So to the extent those are
13 emissions at our largest sources, which are the
14 source of our emissions, those are obviously the
15 ones we're most concerned about, so bringing these
16 exemptions down to the smaller sources seem to make
17 sense to us. And, again, we've taken the more
18 conservative approach, and they don't actually have
19 the ability to get as high as the insignificant
20 activities the federal government allows under
21 Title V.

22 MR. NILLES: No further questions. Thank
23 you.

24 HEARING OFFICER ANTONIOLLI: Mr. Matoesian,

1 would you like to follow up on any of these
2 questions at this time before we proceed with
3 questions for Ms. Hodge?

4 MR. MATOESIAN: You can proceed with
5 questions.

6 HEARING OFFICER ANTONIOLLI: Okay.

7 MS. DRIVER: I actually would like follow
8 up with Mr. Sutton, if that's all right?

9 HEARING OFFICER ANTONIOLLI: Sure.

10 BY MS. DRIVER:

11 Q. The question was asked about the
12 exemption for small sources and, I think,
13 Mr. Sutton, you stated that that was the one permit
14 exemption where there wasn't a HAP restriction in
15 it?

16 A. Right.

17 Q. Let's assume that that exemption was
18 not in place as is currently the case right now and
19 someone files a permit application for the type of
20 activity that that permit exemption would fit, would
21 you have any ability to not issue that permit under
22 normal circumstances in compliance and mapped as a
23 trigger and so forth?

24 A. Well, I mean, first of all, the source

1 cannot be covered by new source performance
2 standard, NESHAP, PSD or new source review, which
3 these are all small sources. They wouldn't -- so I
4 if I understand your question, if the source came in
5 and said, I want a permit for something that doesn't
6 need a permit, historically, the reaction would be
7 we write back and say no permits required.

8 Q. And, currently, if this sort of
9 application is being filed right now, would you have
10 a basis for rejecting the permit?

11 A. No. There would -- I mean, this
12 particular case, because there's no underlying
13 regulation, we basically take the money and issue
14 them the permit.

15 Q. Okay, thank you.

16 The question was raised to you
17 about how the Agency is going to determine whether
18 people are complying with these permit exemptions,
19 and I recall that you stated that the Board Rule
20 201.146 already has several permit exemptions in
21 place, then the Agency already does have some
22 procedure for determining compliance with permit
23 exemption?

24 A. Well, again, to the extent that we

1 would show up at a location that has -- first of
2 all, they are permitted sources, so we show up --
3 historically, what we would have done, our field
4 staff would do, we'd go categorize an inventory of
5 what's there as far as an emission source, and to
6 the extent -- ask if it's permitted, and if not, why
7 not, and if they knew, for example, that the boiler
8 was less than 10 million BTUs, they would ask about
9 that. They would basically say, okay, that's an
10 exempt oil. And so to the extent there is some
11 level of confusion, they may ask the source which
12 exemption you think you fall under. And we've
13 actually, I'm sure, had been sent compliance letters
14 to people who've come back and said, well, no, we
15 are exempt because we do this. So when in doubt,
16 ask.

17 BOARD MEMBER THOMAS: Can I -- because I
18 had a question almost exactly along that line.

19 BY BOARD MEMBER THOMAS:

20 Q. It's my understanding, I think, your
21 testimony that regarding those inspections, the
22 process that you go through now -- or the process
23 that you would go through with regard to these
24 proposed new exempt sources is the exact same

1 process that you currently go through with regard to
2 sources that are now exempt?

3 A. Yes. The one slight difference is
4 that, historically, we have written our exemptions
5 to address fixed objects, if you will, storage
6 tanks, boilers, processes, this opens up the
7 category in that is it based on emissions, so those
8 sources will have to, to an extent, be able to
9 confirm that the emissions are less than .1 pound
10 per hour or .5 pounds per hour, so we'll have to
11 have some basis for that knowledge, if you will.

12 Q. Okay.

13 A. And where we're really hitting is the
14 problem, if you will, with our exemption list is
15 that there are certain things that -- well, the
16 USEPA, when it did the insignificant activities, to
17 make sure that there was no question, threw in
18 categories for bathrooms, Xerox machines,
19 cafeterias, lawn maintenance, because they didn't
20 want anybody coming in arguing, well, yeah, there is
21 emissions when you mow the grass. So is that
22 something to worry about, no.

23 So to that extent we have -- and
24 we get calls from people saying, we have something

1 we think is near zero emissions, if you will. We
2 don't know if there's emissions or not, but we can't
3 find any on your exemption list. Well, then,
4 unfortunately, we'd have to probably -- the safe bet
5 would be go ahead and issue a permit. This will
6 allow those people to proceed without that.

7 HEARING OFFICER ANTONIOLLI: And like
8 it states in the proposal that the owner or operator
9 assumes the responsibility and the risk for
10 inaccurate determinations.

11 MR. SUTTON: Always.

12 HEARING OFFICER ANTONIOLLI: And,
13 specifically, regarding the de minimis emissions
14 threshold.

15 MR. SUTTON: That's correct.

16 BY MS. DRIVER:

17 Q. While we're talking --

18 MR. NILLES: Could I go ahead and ask
19 a question or -- is that okay?

20 MS. DRIVER: Go ahead.

21 BY MR. NILLES:

22 Q. Any there any record keeping
23 requirements to ensure that the inspector can look
24 at when he or she showed up at the source to

1 actually verify that they are exempt?

2 A. We haven't defined those, but we have,
3 and Bob has pointed out to me, we have some of our
4 exemptions currently, they are written based on
5 record retention. There is exemptions, for example,
6 that if you use less than 5,000 gallons of coating,
7 then you're exempt. So to that extent, we don't
8 tell those people what records to keep, but they
9 have to have enough records to demonstrate it's
10 listed 5,000 gallons a year, be it purchase records,
11 whatever. But they have to have some form of proof
12 they use less than 5,000 gallons a year. Similarly,
13 these people then would be on their own to determine
14 what is accurate record keeping to ensure they're in
15 compliance, be it the .44 tons or less than .1
16 pounds per hour. Again, a lot, I think, would
17 entail use of materials and what makes up those
18 materials.

19 Q. You mentioned that a lot of sources --
20 that you receive calls from people saying this
21 activity, we think, is below the threshold, but it
22 doesn't fall under one of the exemptions, do you
23 have those categories listed anywhere as to -- do
24 people call you about X activity over the last

1 decade and say, you know, it doesn't quite fit under
2 the exemption, wish we had one?

3 A. Well, I'm sure there's some of that,
4 and I -- we, I don't think, have been keeping an
5 extensive record of what types of areas we want to
6 think about expanding next into, but there are some
7 areas there that, you know, have come up. I, off
8 the top of my head, can't tell you one, a for
9 instance. We have an office of small businesses
10 people contact and also DECA -- it's not DECA
11 anymore, it's Department of Commerce and Economic
12 Opportunity, that has an office of small business.
13 Like say we want to push that, we would ask them
14 what kind of calls they're getting and what kind of
15 help they've been provided.

16 Q. Is it possible to provide, at the next
17 hearing, a list of the calls or requests for
18 information the Agency has received where the Agency
19 believes these should clearly be exempt, and that's
20 what we're trying to get at, because what we're
21 struggling with is this sledgehammer approach, and
22 its approach that's basically being proposed that is
23 exempting based on emission totals rather than
24 narrowly targeted to the problem of the Agency in

1 hearing about it from the industry, and, I guess, if
2 you have records of hearing from industries saying,
3 you know, we all agree that these particular type of
4 activities should be regulated, then is that the
5 ultimate way to proceed?

6 And also --

7 A. I don't know if we can provide --

8 HEARING OFFICER ANTONIOLLI: Proponent,
9 would you like to comment on that question? I think
10 what he was asking is if either of you could provide
11 any sort of follow-up to the question he had
12 specifically about what response you get from the
13 public on exemptions for particular sources?

14 MS. DRIVER: Are you asking for the Agency
15 to generate records, or are you asking for records
16 they may have?

17 MR. NILLES: Mr. Sutton testified that he
18 receives calls from people who say, we think we're
19 very close to the exemption threshold, but we're not
20 listed, and his advice in current law is, if you're
21 not listed, err on the side of caution, pay your
22 money, get the permit. And if he has been receiving
23 calls about specific types of activity that we all
24 agree should be exempt, is that not a more targeted

1 way to get at this problem than issuing a general
2 exemption that allows unknown sources and unknown
3 potential problems down the road?

4 MR. SUTTON: Well, first, I don't
5 know -- we don't keep records of the calls, so I
6 don't think we can provide that level of
7 information, and I don't know if it's -- it's been a
8 very broad brush as far as areas go, so I don't know
9 if there's been a concentration. And that was why
10 we were hoping to take this particular approach,
11 because, again, we're talking 800 pounds a year for
12 a FESOP source as far as an emission goes, so these
13 are extremely small levels of emissions, and it's
14 for even the larger -- for the -- the 800 pounds,
15 again, for a small source, we're suggesting that it
16 could go up to a half a pound an hour, which is
17 roughly a little over two tons a year by
18 notification. And then that gives us the
19 opportunity, though, it doesn't stop somebody from
20 adding that particular unit, to at least let us know
21 those units are going in and will those particular
22 units raise any concern from us as far as being
23 possibly mischaracterized or have some potential
24 problems. So that is why we threw the notification

1 clause in for the, if you will, slightly larger
2 units.

3 Again, we're talking such small amounts
4 of emissions that I'm afraid that, you know -- it
5 just stops the discussion on are you really worried
6 about a 600-pound-a-year emission source whether
7 it's exempt or not, and we're saying, we would not
8 likely prefer not to worry about it not covered by a
9 permit.

10 HEARING OFFICER ANTONIOLLI: Thank you.

11 Ms. Driver, would you like to continue?

12 MS. DRIVER: Yes, thank you.

13 BY MS. DRIVER:

14 Q. While we're on the discussion of the
15 current permit exemption, there was some question
16 raised, Mr. Sutton, about the need to obtain USEPA
17 approval for the proposal that we have today. The
18 Agency, obviously, has proposed permit exemptions in
19 the past as manifested by that list, also, has, as
20 you've testified to, had in place the insignificant
21 activities thresholds, was there any issue with
22 USEPA about those insignificant activities
23 thresholds in the past, such that you would be
24 concerned about them being carried over to the minor

1 source and FESOP source and the CAAPP source on the
2 construction side?

3 A. Well, the insignificant activities
4 portion of our program was approved as part of the
5 overall Title V permit program, and I don't recall
6 having any particular controversy raised with our
7 insignificant activities list at that time, so to
8 follow that, yeah, I would not presume they would
9 have a particular problem with having our exemptions
10 match these.

11 We took an effort shortly after the
12 insignificant activity to expand or to double our
13 list, and the USEPA thought, nah. Again, this goes
14 into the few areas that we didn't pull back at that
15 time. So no, I personally don't envision we would
16 have a problem with it.

17 Q. And following up on that, the effort
18 that you are discussing about expanding the permit
19 exemption list, I know you get to this in your
20 prefiled testimony, was there any significant
21 concern expressed from the environmental groups in
22 those proceedings?

23 A. Not that I'm aware of.

24 Q. Also, you were asked several questions

1 about medical waste incinerators, and at one point,
2 were asked about the permit exemption for the
3 replacement of air pollution control equipment,
4 which is in the proposal as proposed Section (hhh).

5 You had been asked if the medical waste
6 incinerator is going to replace controls, what would
7 happen with the permit exemption to that scenario?
8 Could I just call your attention to Subsection 4
9 under proposed Section (hhh) and hear your thoughts
10 about how that provision would impact the use of a
11 permit exemption for replacement of air pollution
12 control equipment at a source like a medical waste
13 incinerator?

14 A. Well, the attempt under (hhh) 4 was
15 not necessarily addressed at medical waste
16 incinerators because there already is a MACT in
17 place for them, but what our -- if the USEPA
18 proposes a MACT standard for an emission unit,
19 sources have up to three years to come into
20 compliance with that MACT and --

21 HEARING OFFICER ANTONIOLLI: Mr. Sutton,
22 can you explain what MACT is, too, for the record?

23 MR. SUTTON: We use a lot of acronyms
24 in our business.

1 HEARING OFFICER ANTONIOLLI: We do.

2 MR. SUTTON: Maximum Available Control
3 Technology.

4 HEARING OFFICER ANTONIOLLI: Thanks.

5 BY MR. SUTTON:

6 A. The USEPA basically enforces what --
7 the intent under their NESHAP program, which is
8 National Emissions of Standards for Hazardous Air
9 Pollutants is, again, looking at the top 12 percent
10 of a particular SIC code enforcing all the other
11 people to put that level of control on. And so
12 that's how they come up with this Maximum Available
13 Control technology.

14 Once they propose that under a
15 NESHAP, all new sources have to immediately put that
16 level of control on. Existing sources have up to
17 three years to come into compliance. What we're
18 trying to do here is saying that they need to come
19 into compliance with a MACT. They may have to put
20 on control devices. Those control devices would
21 still be covered by the MACT and they wouldn't be
22 covered by this particular exemption, so that was
23 our intent there.

24 When Bruce asked the question,

1 yes, a medical waste incinerator can put on --
2 replace it's control as long as the control that
3 it's adding is equal to or better than what they
4 have in place already has no collateral increase
5 with any other pollutant and has adequate controls
6 to monitor its emissions. So to that extent -- and
7 the source has to have been in compliance for the
8 last year, we felt there would be no increase and
9 should, in fact, be a decrease in emissions.

10 MS. DRIVER: Can I have just a
11 moment, please?

12 HEARING OFFICER ANTONIOLLI: Sure.

13 (Brief pause.)

14 MS. DRIVER: I believe we're finished
15 with our questions for Mr. Sutton.

16 HEARING OFFICER ANTONIOLLI: Okay.

17 BOARD MEMBER MELIS: Can I take a
18 follow-up on this discussion?

19 MR. SUTTON: Yes.

20 BY BOARD MEMBER MELIS:

21 Q. I'm looking at, again, this (hhh),
22 in Item 2 and 3, you refer to the term target
23 pollutants and then collateral pollutants,
24 respectively.

1 what is the meaning of -- or what do
2 you interpret as the meaning of what is a target
3 pollutant, what is a collateral pollutant?

4 A. Well, the easiest example, I think, to
5 explain that is if you have volatile organic
6 material as an emission that you want to control,
7 whether it's hazardous or not, that would be the
8 target pollutant. And though what you're trying to
9 do is, Bruce pointed out, is to reduce ozone. Ozone
10 is not released in the atmosphere, it's actually
11 created in the atmosphere, where some might be in
12 volatile organic materials. So to reduce ozone, you
13 control VOM. By doing so -- so that would be your
14 target pollutant, you want to reduce VOMs. You
15 might do that by way of an afterburner, where you
16 physically burn that up, and so you might achieve 98
17 or 99 percent destruction of that volatile organic
18 material, but by doing so, you would actually
19 release nitrous oxides or carbon monoxide, which are
20 also what would be called collateral pollutants.

21 And so what we're saying is by
22 increasing your pollution control device, not only
23 do you have to do a better job or equal job with
24 your pollutant that you're concerned about, but you

1 cannot create another emission when doing so.

2 A more simple example is if you have
3 currently have a cyclone, which is a device that
4 controls particulate matter, it just controls
5 particulate matter, doesn't do anything else, you
6 replace that with a bag house, which is equivalent
7 to the bag in your vacuum cleaner, that does a
8 considerably better job of reducing those
9 particulate matter and has no particular other
10 impact on any other pollutant.

11 HEARING OFFICER ANTONIOLLI: Do you
12 think then, proponents, that collateral pollutant
13 would be something that needs to be defined in the
14 rulemaking language, if it's something that's not
15 typically seen in other Board rules?

16 MR. SUTTON: I think we'd be happy to.

17 HEARING OFFICER ANTONIOLLI: Do you
18 want to continue?

19 BY BOARD MEMBER MELIS:

20 Q. Then one other question that I had on
21 (hhh), in Item Number 4, you use the term different
22 regulatory or newly proposed regulatory requirements
23 will not apply to the unit. Would you clarify, what
24 do you mean newly proposed, do they refer to

1 proposed requirements being considered by the Board
2 or other requirements that are replaced?

3 A. Our intent here, again, was to
4 predominantly focus on new federal requirements, and
5 that would be -- the newly proposed would be under
6 NESHAPs, the most likely one.

7 BY BOARD MEMBER LIU:

8 Q. If that's your intent, to just talk
9 about new federal proposals in order to not have
10 some outside group come in and propose a new thing,
11 would you want to include that word federal in
12 there, that might not happen?

13 A. I think we left it open, also, because
14 we also have to come up with new strategies for
15 coming into compliance. So if we determine there's
16 a need to further reduce something, this wouldn't
17 let them out of that. So we haven't come up with
18 our strategies yet, but they may require some
19 additional controls of existing sources.

20 So what we don't want to happen is
21 someone to say, because I did this exemption, I no
22 longer have to comply with a future nox whack rule
23 (phonetic) if we elect to go that way. So I guess I
24 would be reluctant to add that clarifier.

1 Q. Do you envision a problem, for
2 instance, if somebody wanted to take advantage of
3 that statement as it's worded now, to kind of throw
4 a monkey wrench into the works, when you say, newly
5 proposed, that could mean at any level then, could
6 be a state or federal level, or anyone can propose
7 something before the Board at any time?

8 A. Yeah, that is correct. I assume,
9 check with my counsel, but probably state or federal
10 regulation would help clarify it.

11 MR. MATOESIAN: Yeah.

12 HEARING OFFICER ANTONIOLLI: Or
13 something -- and you do mean something that hasn't
14 yet been adopted?

15 BY MR. SUTTON:

16 A. Partly because under the MACT
17 standard, generally, you have to comply with them
18 whether they're formally adopted or not, at least
19 for new sources, so that's why we put the newly
20 proposed.

21 MS. HODGE: And, again, if I may,
22 this is a permit exemption, not an exemption from
23 otherwise applicable regulatory requirements. This
24 is just a permit exemption.

1 HEARING OFFICER ANTONIOLLI: Okay.

2 MR. NILLES: May I ask a follow-up?

3 HEARING OFFICER ANTONIOLLI: Go ahead.

4 BY MR. NILLES:

5 Q. Is this now putting the cart before
6 the horse? Because I just heard you say, we may
7 need to regulate these sources to meet the new
8 particulate standard, and if we do, we don't want to
9 create an exemption, so why would we create an
10 exemption until we know whether or not we need these
11 sources as a part of the solution to fix air quality
12 in Chicago and the metro east?

13 BY MR. SUTTON:

14 A. Well, what I meant to say, but it
15 didn't come out that way, is we do not want to cut
16 off any options into the future. And nothing in
17 these particular exemptions says anybody can violate
18 a state or federal requirement, and so that will
19 continue into the future. We can't do that.

20 So this was just to provide clarity
21 that if you anticipate doing something in the
22 future, we may still come back and ask for more.
23 That was the only purpose for putting it in there.

24 Q. And that would require them to have a

1 permit so you can actually work out what they're
2 doing, right?

3 A. To the extent we come up with a new
4 regulation that says something has to be controlled,
5 that will become something -- it more than likely
6 would become a regulation, obviously, that they'll
7 have to comply with. If we elect to go with the
8 commanding control route, yes, they would need a
9 permit probably to bring them down to those levels.
10 We're not saying that may be the approach we take.

11 Q. You don't know?

12 A. Well, clearly, we may elect to take
13 some level of training program much like our arms
14 program as a means for that. And so we're just
15 saying here, making it clear that people still have
16 to comply with underlying regulations, and that was
17 the intent of the language.

18 Q. Just a question of timing, when is the
19 State obligation to submit to EPA its plan for
20 meeting the ozone and fine particulate standard?

21 A. Again, I'm not the proper person to
22 answer that question, and whatever it is, it'll
23 probably be somewhat stayed by the fact they haven't
24 answered their implementation guidance yet, so their

1 deadline might come and go where if they don't
2 provide the guidance, it's going to be very hard to
3 meet that requirement.

4 Q. Maybe I can ask at the next meeting
5 that the Agency clarify what the deadline is,
6 because there is a deadline, to when it has to
7 propose to USEPA, after having the Board adopt rules
8 to meet the eight-hour ozone fine particulate
9 standard, and I believe it's within the next 12
10 months.

11 And so at this point, with the Agency
12 not clear as to what we need to have in that plan,
13 moving forward with a permit exemption for sources
14 that may have to be regulated seems, again, putting
15 the cart before the horse?

16 A. And I would like to go on record
17 saying it's clear we do not envision controlling
18 these sources to that level. And to the extent
19 Title V sources, the major sources, have to be
20 controlled, this would not impact that decision.

21 HEARING OFFICER ANTONIOLLI: Okay, go
22 ahead.

23 BY MS. DRIVER:

24 Q. Mr. Sutton, possible background on

1 this (hhh) 4 provision, you've talked about the fact
2 that this exemption would not apply where a MACT
3 standard is in place, is it possible that the newly
4 proposed regulatory requirements came about as a
5 concern that a proposed new source performance
6 standard, for instance, could be coming in just
7 about the time that someone is about to put a new
8 replacement pollution control device in place, and
9 the concern was not for people to beat the new
10 standard coming in, just to make sure that the
11 exemption covers rules that are in place and those
12 that are about to be coming into place, is it that
13 that's really what the genesis of this language was
14 getting at, since this is really a permit exemption,
15 not an exemption from regulatory compliance?

16 A. Well, clearly, it is not an exemption
17 from regulatory requirements, and that's what we
18 want to -- I guess we just want to put a note of
19 caution in here that if you are a large source and
20 you have a control device in place, just knowing
21 where the U.S. Government is heading is important.
22 Not so much because the exemption -- because, again,
23 to meet the rest of these, you have to put on a
24 control that's been what you have in place today.

1 It's just that be aware that if there is something
2 out there that you're going to have to meet, you'll
3 still have to meet it. I think if you really want
4 to do it, you can almost just make the Board a note
5 that says, if you will, you still have to comply
6 with underlying federal regulations and future
7 State regulations. So if it's causing that much
8 confusion, that's not a problem.

9 HEARING OFFICER ANTONIOLLI: Okay, thank
10 you. Mr. Melis, do you have any further questions?

11 BOARD MEMBER MELIS: None.

12 HEARING OFFICER ANTONIOLLI: Anyone
13 else from the Board Members or technical unit?

14 BOARD MEMBER LIU: I have some
15 follow-up questions.

16 MR. SUTTON: Sure.

17 BY BOARD MEMBER LIU:

18 Q. Regarding the proposed
19 Subsection (iii)2, in the statement of reasons it
20 notes that the threshold at the .01 percent by
21 weight corresponds to insignificant activity
22 regulations for the CAAPP sources, could you please
23 clarify whether the statement of reasons is
24 referring to the provisions in Section 201.209 that

1 deal with the initiative CAAPPs, that section -- I
2 have it, if you want it.

3 A. I brought my own copy. I agree.

4 Q. Section 201.209 includes de minimis
5 thresholds of .01 percent as well as .1 percent
6 depending on the type and quantity of CAAPP being
7 emitted by the source, we were wondering if you
8 could clarify whether the use of the threshold,
9 .01 percent, was intended to reflect the more
10 conservative threshold, or if there was perhaps
11 another reason why you picked .01 over .1?

12 A. Well, one, we took the conservative
13 approach, and two, generally, this is the lowest as
14 they actually record on an MSDS sheet, so what we're
15 basically saying is you shouldn't have a hit on your
16 MSDS sheet for any hazardous air pollutants.

17 Q. And, also, I'd like to ask you another
18 question that you discussed earlier in response to
19 questions from Mr. Nilles and Ms. Driver, but I was
20 hoping you can just clarify it a little bit more.

21 Regarding the proposed exemptions in
22 Subsection (jjj) for the smallest sources which are
23 not CAAPP sources or joint FESOPs, you mentioned
24 that he didn't purposefully include that .01 percent

1 limit, we were wondering perhaps why that was?

2 A. Well, Title V sources are the largest
3 sources and have generally, historically, the most
4 hazardous air pollutants emitted from them, and are
5 sources that are only a Title V source because it
6 has air pollutants.

7 In the FESOPs, most of those people
8 have taken them as to avoid triggering that Title V
9 criteria pollutant, but there may be some who have
10 actually taken the limit to avoid triggering Title V
11 from a hazardous air pollutant basis.

12 To qualify for the lifetime sources,
13 your potential to emit has to be considerably less
14 than what would make you major. So with the caveat
15 that this doesn't excuse them from any hazardous air
16 pollutants regulation, the USEPA may come under 112
17 for an area source, we felt that these people were
18 not as serious of a risk for hazardous air pollutant
19 emissions, and that they would be far enough from
20 the regulatory trigger that they would be of
21 concern.

22 BOARD MEMBER LIU: Thank you.

23 Ms. Hodge, I do have one question
24 for you as well.

1 MS. HODGE: Okay.

2 BY BOARD MEMBER LIU:

3 Q. In your testimony, in particular, on
4 the prefiled testimony on Page 3, you mentioned that
5 this is phase one of what you call improving the air
6 permitting system or streamlining it, anticipating
7 that maybe there would be future phases to this, and
8 I was wondering if you could kind of give us an
9 outlook of what you see that future looking like?

10 BY MS. HODGE:

11 A. Certainly, I'd be glad to.

12 The executive committee of the
13 Illinois Environmental Regulatory Group has been
14 involved in a streamlining project of sorts, as I
15 said before, for several years, and it's not just
16 limited to the Bureau of Air. We are looking at the
17 different bureaus at the Agency and looking at
18 opportunities for streamlining, and we hope that
19 we'll be coming forward to the Board within the next
20 six months or so with some additional streamlining
21 proposals for -- the ones we've identified right now
22 deal with Bureau of Air permitting issues, as well
23 as Bureau of Water permitting issues. We are a
24 little bit further behind probably on the Bureau of

1 Land. But yes, we do have things that we're working
2 on right now and we hope to be coming forward.

3 BOARD MEMBER LIU: Thank you.

4 HEARING OFFICER ANTONIOLLI: Anyone else,
5 questions?

6 MR. NILLES: A couple questions for
7 Ms. Hodge.

8 BY MR. NILLES:

9 Q. You mentioned other streamlining
10 issues, are you in discussions with IEPA right now
11 about those streamlining proposals?

12 A. Not right now, we are not.

13 Q. Can you give us more specifics about
14 areas that you're considering?

15 MS. DRIVER: I'm going to object to
16 that just for -- those are internal discussions
17 right now. We're not talking about it with people
18 outside the group, and I think that needs to remain
19 within the group until decisions are made, at least.

20 BY MR. NILLES:

21 Q. Ms. Hodge, in summarizing each of the
22 states, turning to Wisconsin, which is the last page
23 of your report, basically, the same question I had
24 for Mr. Don Sutton, which is, your reference to the

1 new streamlining required by law, the notice with
2 contact 118, are you aware that the USEPA has raised
3 serious concerns with contact 118?

4 A. I am not aware.

5 Q. You are aware that USEPA must approve
6 the Illinois EPA before the Board adopts the
7 regulations; is that correct?

8 A. Yes, that's my understanding.

9 MS. DRIVER: What kind of regulations
10 are you referring to in that question?

11 MR. NILLES: Changes to the state
12 implementation plan.

13 MR. SUTTON: If I could add, what's
14 already here on Wisconsin is already in place in
15 their state. These aren't proposed, these are
16 already existing.

17 MR. NILLES: I'm referring to number
18 three.

19 MR. SUTTON: Oh, okay.

20 MS. HODGE: As far as the items in
21 Roman Numeral 2 are a list of --

22 MR. SUTTON: And the number two
23 numbers are higher than the numbers we're talking
24 about.

1

2 BY MR. NILLES

3 Q. Ms. Hodge, has the Illinois
4 Environmental Regulatory Group ever done an analysis
5 as to the resources the Agency needs to be able to
6 issue permits in a timely manner?

7 MS. DRIVER: I was just going to note,
8 before that question is answered, an objection to
9 what knowledge we would have without the Agency's
10 internal operations. I'm not sure that we're the
11 best person to speak to that, but with that
12 objection noted, if you want to respond the best
13 you can.

14 MS. HODGE: I'll try, I'll try.

15 HEARING OFFICER ANTONIOLLI: Sure.
16 With that caveat noted, then you can go ahead and
17 answer the best you can.

18 MS. HODGE: Thank you.

19 BY MS. HODGE:

20 A. I am aware that during the early days
21 of the Title V program in Illinois, you know, with
22 the implementation of the Title V permit
23 requirements in the State of Illinois, that there
24 was some ongoing dialogue between Illinois EPA and

1 the Illinois Environmental Regulatory Group about
2 resources that would be needed to fund the program.

3 I personally was not intimately
4 involved in that project, but I am aware that, you
5 know -- or did significant work.

6 BY MR. NILLES:

7 Q. You state in your testimony that there
8 can be permitting delays because the Agency doesn't
9 issue operating permits in a timely manner?

10 MS. DRIVER: Can you show us where
11 you're talking about?

12 MR. NILLES: I'm sorry. That was
13 Don Sutton's testimony. Scratch that.

14 BY MR. NILLES:

15 Q. Let me ask this question. Let me ask
16 it slightly differently.

17 If a facility wants to change its
18 operating permits and it submitted an application to
19 the Agency, can the source proceed to operate absent
20 the State acting on the operating permit change?

21 A. It depends upon what the change
22 request would be.

23 MS. DRIVER: Are you talking about
24 currently or under the exemption that we've

1 proposed?

2 MR. NILLES: I'm talking currently.

3 MR. DRIVER: And which type of operating
4 permit are you talking about?

5 MR. NILLES: Title V permits.

6 BY MR. NILLES:

7 Q. You submitted an application to the
8 Agency for a Title V exemption, you can continue to
9 operate, is that correct, under the permit --

10 MS. DRIVER: Is the permit issued?

11 MR. NILLES: No.

12 MS. DRIVER: The permit has not been
13 issued?

14 MR. NILLES: Correct.

15 MS. DRIVER: And you're asking if a
16 facility can operate without the Title V permit
17 being issued?

18 MR. NILLES: Correct. I was asking

19 Ms. Hodge.

20 BY MR. NILLES:

21 Q. Can a major source of pollution that
22 applied for a Title V permit continue to operate
23 absent the State acting on the Title V permit?

24 A. That's a different question.

1 Yes, my understanding is that that
2 is correct, that under the transition requirements
3 for Title V, if someone makes a timely application,
4 timely and complete application for a Title V
5 permit, they can continue to operate under the
6 existing State operating permits.

7 Q. Are you aware of any source that has
8 been unable to make a change because of a delay in
9 the Agency acting on any type of operating permit?

10 A. I'm not personally aware.

11 Q. In your testimony on Page 4, you state
12 that one of the benefits of this reallocation of
13 Illinois EPA resource is especially crucial during
14 this current period of state and budget constraints;
15 is that correct?

16 A. That's correct.

17 Q. Is there any general purpose revenue
18 assigned to the air program?

19 A. My understanding is there is not.

20 Q. So how does the budget constraints
21 affect permit issuance rates?

22 A. Because I believe that Mr. Sutton
23 testified to, early on, his staff has reduced levels
24 of staff right now notwithstanding the fact that the

1 permit fees have increased, fewer dollars are going
2 to run the program.

3 Q. So the problem is a lack of target
4 resources so they have enough to be able to process
5 a permit?

6 A. I'm not sure I agree with that.

7 MR. NILLES: Thank you. No further
8 questions.

9 MS. DRIVER: Can I have just a moment?

10 (Brief pause.)

11 MS. DRIVER: Could we have Mr. Jirik
12 sworn just to follow up on a question, I think it
13 will clarify, that's been asked of Ms. Hodge?

14 HEARING OFFICER ANTONIOLLI: Sure, of
15 course.

16 (Witness sworn.)

17 BY MS. DRIVER:

18 Q. Mr. Jirik, a question had just been
19 posed of Ms. Hodge about whether a source could make
20 a -- has been prevented from making changes and
21 without getting a modification to their operating
22 permit. I'm not sure the intent of the question
23 necessarily was understood with respect to the
24 answers that were given.

1 In your capacity as working at a
2 facility that could be impacted by these permit
3 exemptions, could you talk a little bit the
4 carryover of the insignificant activity on the
5 operating side to the requirement to have a
6 construction permit before a change can be made?

7 A. Specific to the insignificant
8 activities relative to operating permits, today
9 there is a requirement, and we've had testimony in
10 that regard, that one still receive a construction
11 permit for things that had been acknowledged and not
12 regulated insignificant activities. So while the
13 question and the answer was accurate relative to the
14 operating permit, it is necessary and advised and
15 mandatory to wait and incur a delay until the
16 nominal construction permit issued for a matter that
17 with the State of Illinois has recognized and
18 apparently are still having states involved to
19 recognize as minor insignificant activities.

20 So a delay is indeed incurred at the
21 point of construction permitting, which is the
22 subject addressed relative to the insignificant
23 activities.

24 MS. SHARKEY: Could I ask a follow-up

1 question?

2 HEARING OFFICER ANTONIOLLI: Sure.

3 MS. SHARKEY: Pat Sharkey asking

4 Alan Jirik.

5 BY MS. SHARKEY:

6 Q. If it's not a Title V source, you also
7 need to -- isn't it true that you also experience a
8 delay waiting for the operating permit as well?

9 A. If you're a Title V --

10 Q. If you are a FESOP source, for
11 example, you need a construction permit?

12 A. You are required to get a construction
13 permit. Once that is complete, then the answer is
14 accurate relative to operating, but there is a
15 delay, and that point needs to be emphasized, at the
16 construction permit level. And then for the
17 non-Title V's, you also have the operating permits.

18 Q. Thank you.

19 And that would be true for a minor
20 source lifetime source as well?

21 MR. NILLES: Objection as to personal
22 knowledge of this. If you're a major source, right?

23 MR. JIRIK: I'm a major source, so I
24 can't speak to -- I mean, I understand the

1 regulations, but I'm --

2 BY MS. SHARKEY:

3 Q. Could I direct that question then
4 toward Mr. Sutton?

5 A. I would like to answer it and actually
6 even take it a step farther.

7 When you determine whether you're
8 a major source for Title V, it doesn't matter
9 whether your emission units are permitted or not.
10 You look at your potential emissions of all emission
11 units at your source to determine if you trigger the
12 Title V threshold. So that end, it doesn't matter
13 whether I issue a permit or not or exempt it or not,
14 you still look at all the emissions, add up all the
15 numbers, and if it's -- for example, if the nitrous
16 oxides are greater than 100 tons a year, you need a
17 Title V permit.

18 To that extent, sources then come back
19 and say, well, that's my potential. In reality, my
20 actual emissions are much lower than that, can I
21 take limits to limit and become a FESOP? Again,
22 they can, and we issue a federally enforceable state
23 operating permit limiting those things that they
24 elect to take voluntary limits on to keep them from

1 becoming major, but we still identify all emission
2 units at that source to make sure they're not major
3 sources. They still have to come in and get
4 construction permits, as Pat says, for adding small
5 units, and then we have to amend their FESOP to
6 address the operations under that CAAPP.

7 Even after this exemption ends out,
8 when we come up for renewal and the source has to
9 report, you know, they keep their units, they cannot
10 add enough incident units that would change their
11 major source threshold. So as Bob renews their
12 FESOP, he continues what is limited and he -- we
13 have what's called an Attached A, where we limit all
14 the other nonpermitted units and what their
15 emissions are. So you can take the nonpermitted
16 emissions plus the permit emissions and make sure
17 they're less than major. Long answer to your
18 question, Pat, did I get it?

19 Q. Yes.

20 And, Mr. Sutton, one more, would that
21 be true for a minor source as well as lifetime
22 source, that if they indeed had -- I believe the
23 question is whether there is somehow a permit
24 shield, the application shield would result in

1 there not being a problem or a delay for a source in
2 making a change at its unit by the addition of one
3 of these various de minimis emission sources. And I
4 think the initial answer was based on the concept of
5 a summit shield for a Title V application, you have
6 now answered for a FESOP application, and I'm going
7 down to the lifetime permitting level, that
8 multitude of emissions sources that are permitted
9 out there, will those people, those very small
10 emission sources end with a delay, will they be
11 required to get both a construction permit and also
12 then get an operating permit?

13 A. They do have the requirement for a
14 construction permit and operating permit. If, in
15 fact, they are very small units, oftentimes, Bob
16 will issue what's called a joint construction
17 operating permit, and so that would somewhat limit
18 that, so we have that capability. And as you point
19 out, they still would count account all their
20 emissions toward the Title V applicability.

21 In theory -- and I don't know if
22 we have one in the State of Illinois, but you can,
23 in fact, have a source who sold all the emission
24 units they have are less than significant, they're

1 all insignificant activities, but yet, when added up
2 in aggregate, they are major sources, so they end up
3 with a Title V permit, which basically is hollow
4 saying you are an insignificant activity source.
5 You don't report anything, you pay the minimum fee,
6 but we recognize that because of all these
7 emissions, you are still high enough to trigger the
8 major source threshold. I don't recall if we
9 actually have one of those in our state.

10 HEARING OFFICER ANTONIOLLI: Thank
11 you.

12 MR. NILLES: One quick follow-up
13 question.

14 BY MR. NILLES:

15 Q. What is the total amount of air
16 pollution that could increase under these exemptions
17 for these sources, what's the worst case scenario?

18 A. Well, Bruce, again, in the
19 hypothetical, it's unlimited.

20 Q. The amount of air pollution?

21 A. Right, in the hypothetical.

22 Because like I said, you could end up
23 adding up enough of these that you end up being a
24 Title V source. In the reality of the situation, I

1 don't think that would ever occur, but that can
2 happen.

3 One thing you -- well, we could back it
4 up and say, first of all, you can't trigger an MSDS,
5 NESHAP, you can't trigger PSD or new source review,
6 so -- and you can't change status between FESOP,
7 Title V or major source, so I guess -- let me back
8 it up and say, okay, the more conservative the
9 estimate is you can't probably take a smaller source
10 with which we got 5,600 of those and add some level
11 of pollutant which would trigger some of those
12 things.

13 The minimum, let's say 5,000 sources
14 times ten tons of any one half would put them in the
15 next threshold, so that would be one cut. So
16 that's, what, 5,000 times 10, 50,000 tons, if you
17 will.

18 So I don't know what the actual
19 emissions would be, and these are very small
20 sources, historically, haven't changed over time,
21 haven't seen a lot of activity. We don't envision
22 much emissions, but I can't give you a bottom line
23 saying they can't exceed a certain number.

24 Q. Let me break it down.

1 There's 5620 small lifetime
2 sources?

3 A. Right.

4 Q. These exemptions, would it allow them
5 to make changes and increase pollution up to
6 two tons per modification.

7 A. Right.

8 HEARING OFFICER ANTONIOLLI: Would you like
9 to comment on that question?

10 BY MS. SHARKEY:

11 Q. I want to make sure that the responder
12 is answering the question that's asked, would allow
13 increased emissions or would allow the emissions to
14 go without a permit, not be requesting a permit, to
15 make sure that Mr. Sutton understands the difference
16 in the question?

17 A. I think that -- go ahead --

18 HEARING OFFICER ANTONIOLLI: Is that
19 your question, Mr. Nilles?

20 BY MR. NILLES:

21 Q. My question is, these 5,620 sources
22 are going to be exempt from certain activities if
23 the Board approves what is being proposed today?

24 A. Right.

1 Q. And a part of that exemption is --
2 exempting from permit, are activities that increase
3 air pollution at each of these sources by up to
4 two tons of pollution per modification.

5 A. Per unit.

6 Q. What is the safer unit?

7 A. Well, basically, it's .5 pounds per
8 hour, per unit.

9 Q. But there are multiple units?

10 A. Right.

11 Q. So each source could increase more
12 than two tons?

13 A. Oh, yes, if they had more units.

14 What I was getting at is your 2.2
15 tons a year is for that particular unit, if you
16 times it 8,760 hours in a year. I was just getting
17 ahead of you math wise.

18 Q. Not difficult.

19 (Laughter.)

20 BY MR. NILLES:

21 Q. So we have 5,620 minor sources, each
22 unit can increase 2.2 tons per year and be exempt
23 from permitting, and each of these 5,620 sources can
24 have multiple units, and the 2.2 tons includes

1 hazardous air pollutants, am I correct?

2 A. So far.

3 Q. And there's no public role in any of
4 this exemption process; is that correct?

5 A. Nor similarly, as I think Pat pointed
6 out earlier, that those units came in and asked for
7 a permit -- no, no room. There would be no public
8 notice requirement, which is, I think, what Bruce
9 was heading for, and I was just going to add
10 similarly today, if they came and got a permit for
11 the same unit, there would be no public notice for
12 that.

13 HEARING OFFICER ANTONIOLLI: Do you
14 have a question?

15 MS. SHARKEY: I'd just like to follow
16 up to make sure that I'm clear on what Mr. Sutton is
17 saying and that the Board is clear on what
18 Mr. Sutton is saying.

19 HEARING OFFICER ANTONIOLLI: Do you
20 need to be sworn in?

21 MS. SHARKEY: No, I would like to
22 ask questions.

23 HEARING OFFICER ANTONIOLLI: Okay.

24 BY MS. SHARKEY:

1 Q. Mr. Sutton, the question was asked as
2 to whether or not -- I believe the question was
3 asked as to whether or not there would be the total
4 amount of air pollution increase by virtue of this
5 regulation, is this by virtue of exempting from
6 permitting, is there actually any increase in
7 emissions from an emission source?

8 A. There's -- if all the sources we have
9 permitted today stayed the same, there's no
10 increase. The emissions are what they are. What
11 this would allow would be additional units to come
12 in to existing permitted sources so they could add
13 an additional unit at less than .1 pounds per hour
14 or up to .5 pounds per hour as long as they notify
15 us what that is, without the requirement for a
16 construction permit or modification of their
17 operating permit.

18 Q. So if they came in for a permit, they
19 would have the increased emission, and if they did
20 not -- if they were exempt, they would have the
21 increase in emissions, so isn't it true that there
22 is absolutely no difference in emissions as to
23 whether it's permitted or exempted?

24 A. I'm not going to be so bold as to say

1 that the fact that somebody has to get a permit from
2 me is slowing up their business growth, so I agree
3 with your assessment that the emissions would be the
4 same whether they're permitted or not, and the
5 activity would occur whether they're permitted or
6 not, the difference being is that they don't have to
7 pay me a fee for that construction permit and I
8 don't have to process it.

9 Q. And you had testified earlier, I
10 believe, that, in fact, all of those emissions from
11 the exempt emission sources must be included in any
12 potential to emit analysis that that source is
13 subject to, is keeping and is subject to determine
14 whether or not it triggers any other regulatory
15 requirements?

16 A. That's correct.

17 Q. So the emissions involved in those
18 exempt sources are going to be reflected whether
19 permitted or not, would be required to be reflected
20 under law?

21 A. They have to take in consideration all
22 emissions of all units to determine the regulatory
23 status.

24 MS. SHARKEY: Thank you.

1 BY MR. NILLES:

2 Q. Mr. Sutton, you have no record of what
3 changes they made, if these exemptions go through;
4 is that correct?

5 A. Correct. We'd have no record if it's
6 less than .1 pound per hour, we'd have notification
7 if it's greater than that and less than .5 pounds
8 per hour. So we would have records indicating that
9 one that -- that one between the greater than .1,
10 less than .5, actually had occurred, and that would
11 go into our file.

12 BY MS. DRIVER:

13 Q. Isn't it true then, Mr. Sutton, you
14 would have notification on the Title V sources
15 because they have to follow that process under their
16 Title V permit for insignificant activities?

17 A. The problem is, obviously, we have
18 three major types of permits, we have Title V
19 permits, which are larger sources, they have their
20 own sets of rules, they have the insignificant
21 activity rules, and they do have to tell us what
22 they are initially in that renewal so we have that
23 information. If they add new ones that weren't
24 previously covered by the Title V permit, they have

1 to tell us about that, so they'd have to let us know
2 what's going on.

3 The FESOP, which are the next
4 ones, they're probably, if you will, some of our
5 more critical ones, because they have -- they're
6 trying not to become, if you will, Title V sources.
7 So one, we have a very small de minimis increase for
8 them, and two, they have to let us know, and as Pat
9 pointed out, they cannot change their regulatory
10 status by adding insignificant activities.

11 So to that extent, we keep track of
12 that particular group because it's of concern, then
13 we have, I think, where Bruce was heading, is our
14 smallest ones, which we have annual emission reports
15 from what is permitted at those sources. So if they
16 don't have a requirement to report emissions from
17 nonpermitted units, if you will, but they do have an
18 obligation to remain where they're at, if we show up
19 as sometimes we have been known to do and find out
20 that they have enough emissions that they're
21 miscategorized, then we take action against them.

22 So if you think you're a minor
23 source and we think you're a Title V source, that's
24 a big problem, and it will cost you a lot of

1 dollars.

2 MR. MATOESIAN: Can I just --

3 BY MR. MATOESIAN:

4 Q. And, Mr. Sutton, and the risk, again,
5 is always on the source --

6 A. On the source.

7 Q. -- to make sure that their calculation
8 and their assertions are correct?

9 A. Right.

10 BY MR. NILLES:

11 Q. When you get a permit right now for
12 the minor sources, construction permits, is part of
13 the analysis before you issue a permit to make sure
14 that they don't trigger any of the programs you
15 considered to make sure that their emissions are
16 under MSDS, PSD, major source definition, is that
17 part of the analysis, do you know?

18 A. Yes.

19 Q. That analysis won't happen for those
20 sources that are now going to be exempt and emit
21 less than .1 pound per hour; is that correct?

22 A. To the extent that somebody does not
23 submit an application and I'm not able to then
24 review, as Chuck pointed out, the burden, if you

1 will, and the risk, if you will, is on the
2 applicant, because it does not shield them from
3 future prosecution if, in fact, they mischaracterize
4 their source.

5 Q. Has the Agency given any thought as to
6 what the notification would be for those sources
7 that are between .1 and .5 pounds per hour?

8 A. Our presumption is, one, it would be
9 by letter. These are existing sources, so we have a
10 way of tracking them, and there is just a prior --
11 we assume there would be no waiting period, it's
12 basically we plan to install a unit of a certain
13 size, obviously, less than .5 pounds per hour and
14 presumably greater than .1 pound per hour, they
15 shouldn't have to write the letter, they're just
16 sending it to us. So it's our intent to add this
17 particular emission unit.

18 Q. Would you consider some kind of
19 certification requiring them to certify that it's
20 below any other applicable thresholds, put the onus
21 squarely on the applicant?

22 A. On the smaller sources, yes, and also,
23 we, if need be, develop a forum to basically tell
24 them it's not covered by MSDS, which is most likely

1 what it's going to trigger. But, again, these are
2 most of the MSDS is units larger than this.

3 We know what their actual emissions
4 are. They've been reported to us. We actually --
5 we have some assemblance of what their potentials
6 are. The level of scrutiny, I think, would -- and I
7 don't want to speak on Bob's behalf, but, obviously,
8 would be based on how historically large they have
9 been.

10 If, like most of these sources, their
11 combined emissions in total is less than 25 tons a
12 year actual emissions, the bulk of them pay us the
13 minimum fee, and that cutoff is based only all your
14 emissions in aggregate being less than 25 tons. So
15 those people pay us \$200 a year as an operating fee,
16 and, of those, 5,620 sources, the bulk of them pay
17 us \$200. And, Chuck, please make note, we will
18 provide that number to you at the of the next
19 hearing, so I would suggest approximately close to
20 5,000 of those pay us \$200. So their actual
21 emission in aggregate are less 25 tons. Keeping in
22 mind, other than the hazardous air pollutant
23 trigger, after June 15th, the lowest level will be
24 100 tons for major source for Title V, and so

1 they'll be a long way away from that major source
2 threshold.

3 So I don't envision us spending a
4 tremendous amount of time trying to make sure that
5 somebody whose actual emissions are 20 tons in
6 aggregate is less than 100 tons of any one
7 pollutant.

8 A. The one thing they will obviously keep
9 somewhat concerned on is hazardous air pollutants,
10 but, again, they report their hazardous air
11 pollutants to us currently, and most of these are
12 very, very small hazardous air pollutant sources.

13 What you see predominantly is
14 something that's in relationship to indirect/direct
15 heating-type operations or some small
16 coating/finishing-type operations. So these, like I
17 said, are small units. But we will provide the
18 number of people who pay us the \$200 a year
19 operating fee.

20 BY HEARING OFFICER ANTONIOLLI:

21 Q. But back to the notice requirement, it
22 states in the rule language that the unit can be
23 then constructed, installed or modified immediately
24 after the notification is filed, so there's no lag

1 time there, and the applicant doesn't have to wait
2 for the Agency to get back to it?

3 A. That's correct. We deliberately just
4 wanted a notification, we didn't want them to assume
5 when they get back to us -- again, they're
6 proceeding at their own risk, but we didn't want to
7 put any particular burden on us to come back within
8 two days, seven days, whatever. So if they're
9 confident, they send us a letter and they go on. If
10 they're not confident, then as they would do today,
11 some sources would send us a letter saying we're
12 anticipating doing this, does it meet the exemption,
13 and then we would respond to that, so we do provide
14 that.

15 BY MR. NILLES:

16 Q. Does the Agency consider requiring
17 notification from all of these changes so they had a
18 record for its inspectors?

19 A. We picked this particular group
20 because, again, .5 pounds per hour is not a huge
21 emission source, but it is somewhat. At .1 pound
22 per hour or less that -- roughly 800 pounds a year,
23 we would not want to keep track or handle that
24 amount of paperwork? I don't think it's necessary

1 or adds to the overall goals.

2 Q. This include hazardous air pollutants,
3 though, right?

4 A. Only at the smaller sources. Keep in
5 mind the FESOP ones, it's -- again, it's less than
6 .1 percent of that .1 pound per hour, so I have no
7 concern for the FESOP sources. For the smaller guy,
8 again, that's 800 pounds a year of hazardous air
9 pollutants, it's .1 pound per hour, even at that
10 level, that's not a tremendous amount.

11 Q. 800 pounds of hazardous air pollutant
12 is not large enough?

13 A. No, if you keep in mind USEPA's
14 concern level is ten tons per year. That is where
15 they draw the line in the sand.

16 HEARING OFFICER ANTONIOLLI: Do I see
17 a question in the back?

18 MS. SHARKEY: Yeah, if I could just follow
19 up on that?

20 BY MS. SHARKEY:

21 Q. Mr. Sutton, if indeed that emission
22 source, de minimis emission source unit were subject
23 to a permit and it were not subject to a NESHAP or
24 any other federal requirement, were not at a major

1 source for hazardous air pollutant, is there any
2 emission limitation or other controls designed to be
3 used, HAPs that would be included in the permit, if
4 indeed this de minimis emission unit were subject to
5 permitting?

6 A. No.

7 Q. So there would be no difference in
8 HAPs whether it was permitted or not; is that
9 correct?

10 A. Correct.

11 MS. SHARKEY: Thank you.

12 BY MR. MATOESIAN:

13 Q. When you said that 880 pounds of HAPs
14 were not of concern, you're speaking strictly for
15 permitting purposes, correct?

16 A. Right, and regulatory purposes. There
17 is no regulation -- keep in mind all the federal
18 requirements still exist, and all we're talking
19 about here is the need for permit even though
20 there's no underlying control that goes with that
21 permit.

22 HEARING OFFICER ANTONIOLLI: I have a
23 couple questions about the language, too, then.

24 BY HEARING OFFICER ANTONIOLLI:

1 Q. Looking at the proposed language on
2 the first line after the title, exemptions for State
3 permit requirement, it states, construction or
4 operating permits pursuant to Sections 201.142,
5 201.143, and then should that be 201.144?

6 A. I think you're right.

7 Q. And then I had one more.

8 Then at Subsection (hhh) 5, will the
9 proposed amendments require new air pollution
10 control equipment to be equipped with monitoring
11 devices only if existing pollution control equipment
12 is also required by the Board rules to have such
13 devices?

14 So I think what -- the language
15 says, where the existing air pollution control
16 equipment had required monitoring equipment, should
17 that be has instead of had required, so where the
18 existing air pollution control equipment has
19 monitoring equipment? I know this is pretty
20 technical stuff here, but we have to make sure
21 that --

22 MS. HODGE: I think that's okay.

23 MR. SUTTON: It sounds good so far.

24 BY HEARING OFFICER ANTONIOLLI:

1 Q. And then continuing on the new air
2 pollution control equipment, will be equipped with
3 instrumentation and monitoring devices that are
4 typically installed on the new equipment of such
5 type?

6 BY MR. SUTTON:

7 A. Yes.

8 BY BOARD MEMBER LIU:

9 Q. And the follow-up to that is, if the
10 existing air pollution control equipment didn't have
11 air monitoring equipment associated with it, the new
12 equipment wouldn't need it either?

13 A. If they elected to add a device that
14 has an underlying requirement for control, so it's
15 different than the previous, then they would have to
16 have that monitoring on there. On the inverse, I'd
17 probably answer your question, but if the new device
18 had no control and no one had the control, you're
19 right, I agree.

20 BY MR. NILLES:

21 Q. Sticking to that provision, can you
22 define typically? I'm not familiar with the term
23 typically being used in regulations.

24 HEARING OFFICER ANTONIOLLI: Now, if you

1 wanted to note that -- I don't know if the Agency or
2 IERG is prepared to answer that now, but that's
3 something that may be able to be flushed out at the
4 next hearing.

5 MS. HODGE: We'll address that.

6 HEARING OFFICER ANTONIOLLI: And do
7 we have any further questions?

8 Yes, Ms. Sharkey?

9 MS. SHARKEY: I would like to clarify
10 one more point.

11 BY MS. SHARKEY:

12 Q. There were questions regarding
13 identification of these emission sources and some
14 concern that those units that are subject to this
15 exemption may not -- that we're relying on the
16 source to identify those units, I wanted to ask
17 Mr. Sutton, isn't it true that the Agency relies on
18 the source to identify emission units in all of its
19 permitting activities apart from inspecting the
20 facility, of course?

21 A. It is true that the application -- we
22 rely on information by applicant in the application
23 to process that permit. Very seldom we go and do an
24 independent evaluation on-site as to -- so if

1 somebody says they're going to build something, we
2 have to take on them on their word.

3 Q. So the burden is on the applicant to
4 identify what those emission units are?

5 A. Always.

6 Q. And applicants certify their
7 applications, do they not?

8 A. Yes.

9 Q. And in terms of the current
10 categorical exemptions that exist in
11 Section 201.146, those parties who are believed that
12 are subject to categorical exemptions identify those
13 units themselves, do they not? The burden continues
14 to be on that applicant to determine that that falls
15 under that exemption?

16 A. Correct.

17 Q. And so, in this case, what we're
18 talking about is parties -- is simply that the same
19 burden that is currently on sources that are
20 utilizing an exemption would be on these sources,
21 just as it is for the categorical exemption; is that
22 correct?

23 A. Correct.

24 MS. SHARKEY: No more questions,

1 thank you.

2 HEARING OFFICER ANTONIOLLI: Thank
3 you. Any further questions?

4 MR. NILLES: Just a quick follow-up.

5 BY MR. NILLES:

6 Q. You mentioned that an applicant has to
7 certify the number of emission units, correct? Let
8 me back up.

9 A critical piece of the enforcement
10 program that the State has in place right now is
11 that there's a record and an application that the
12 Agency has to certify under the threat of perjury;
13 is that correct?

14 A. Yes.

15 Q. Does the Agency prosecute companies
16 for false statements? Does the Agency have the
17 authority to prosecute people for false statements?

18 A. I presume.

19 Q. Can we add the definition of -- let me
20 turn specifically to that.

21 3-5 of the proposal lists the type
22 of activities for purposes of compliance, and it
23 limits it to relating to air emissions of the
24 source?

1 MS. DRIVER: Where are you?

2 MR. NILLES: I'm sorry, (iii) 5.

3 BY MR. NILLES:

4 Q. Does the Agency consider someone who
5 falsifies their application to be in violation
6 relating to air emissions of the source? Let me say
7 this another way.

8 Is it the Agency's intent to say,
9 you're in compliance with all your applicable
10 requirements but maybe get prosecuted for false
11 statements and would be allowed to apply for the
12 exemption?

13 A. I don't understand the question.

14 Q. Let me try it a slightly different
15 way.

16 HEARING OFFICER ANTONIOLLI: Are you
17 asking whether that's necessary to include in the
18 language?

19 MR. NILLES: That's right, thank you.

20 BY MR. SUTTON:

21 A. I don't think it's necessary. I mean,
22 we don't -- I think it's understood if you lie to
23 us, that's a violation, but I don't know if we have
24 to state in here that you can't lie on your

1 application. That seems a little redundant.

2 BY MR. NILLES:

3 Q. Does it relate to the air emissions of
4 the source?

5 A. Well, again, I think it doesn't follow
6 logically that you have to point out to people they
7 have to not lie to us and still qualify for
8 something. I think the presumption is that they
9 will be honest to start and would like to keep that
10 presumption.

11 Q. I guess maybe the question I would
12 make then is, has the Agency consulted with either
13 the enforcement folks or the Attorney General's
14 Office about these provisions?

15 MR. MATOESIAN: And just for clarification,
16 the Agency does not prosecute perjury, we might
17 refer them to the Attorney General, just to clarify.
18 I don't know if anyone has spoken to the Attorney
19 General.

20 MR. NILLES: If I could request that
21 the Agency would do that to make sure that this
22 actually picks up the type of cases that the
23 Attorney General would prosecute, particularly,
24 false statements. We know it's a big deal at the

1 federal level, and I would believe an important tool
2 at the state level as well.

3 HEARING OFFICER ANTONIOLLI: Now,
4 do any of the Board members have any further
5 questions? Anybody else?

6 Let's go off the record here for a
7 minute.

8 (Whereupon, a discussion was had
9 off the record.)

10 HEARING OFFICER ANTONIOLLI: And I'll
11 note, too, that Board Member Moore has left the
12 room. We still have Board Member Melis and Board
13 Member Johnson here. We are approaching 12:45 here,
14 or just passed 12:45, and I'd like to state that the
15 Board has scheduled a second hearing in this matter
16 for June 14th, 2005, in Springfield. The hearing
17 will be at 10 a.m. in the Board offices there.

18 Any person wishing to testify should
19 prefile testimony by Wednesday, June 1st. We expect
20 to have the transcript of today's hearing available
21 in approximately eight business days. Soon after we
22 receive it, the Board will post the transcript on
23 our website, which is www.ipcb.state.il.us.

24 There, the transcript, as well as the

1 Agency's and the IERG's proposal and all of the
2 Board orders, including prefiled testimony, will be
3 viewable and downloadable at no charge.

4 Alternatively, you can order a copy of the
5 transcript from the Clerk of the Board at \$.75 a
6 page.

7 Anyone can file a public comment in
8 this proceeding with the Clerk of the Board,
9 Ms. Dorothy Gunn, but please note that when filing
10 public comment, you must serve all of the people on
11 the service list with a copy of that public comment.
12 And as I mentioned earlier today, I have extra
13 copies of the current service list and notice list
14 here with me. But, also, if this is a few weeks
15 down the road, please check with the Board for the
16 current service list. And as I noted earlier,
17 Mr. Matoesian also has extra copies of the proposal
18 and extra copies of the prefiled testimony so far,
19 if you'd like.

20 If there's nothing further, then I wish
21 to thank everybody here for your comments and your
22 testimony, and the hearing is closed. I will see
23 you again on June 14th. Thank you.

24 (Which were all the proceedings

1 had on this date.)

2 STATE OF ILLINOIS)
) SS.
3 COUNTY OF DUPAGE)

4

5 I, STACY L. LULIAS, CSR, do hereby
6 state that I am a court reporter doing business in
7 the City of Chicago, County of DuPage, and State of
8 Illinois; that I reported by means of machine
9 shorthand the proceedings held in the foregoing
10 cause, and that the foregoing is a true and correct
11 transcript of my shorthand notes so taken as
12 aforesaid.

13

14

15

Stacy L. Lulias, CSR
Notary Public,
DuPage County, Illinois

17

18 SUBSCRIBED AND SWORN TO
19 before me this ___ day
of _____, A.D., 2005.

20

21 _____
Notary Public

22

23

24

