

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 COLOR COMMUNICATIONS, INC.,)

4 Petitioner,) PCB No. 96-125

5 v.) Permit Appeal

6 ILLINOIS ENVIRONMENTAL PROTECTION)

7 AGENCY,)

8 Respondent.)

9

10 100 West Randolph Street

11 Suite 11-500

12 Chicago, Illinois

13

14 Thursday, April 11, 1996

15 10:00 o'clock a.m.

16 PRESENT:

17 MS. JUNE C. EDVENSON, Hearing Officer

18

19 APPEARANCES:

20 BUTLER, RUBIN, SALTARELLI & BOYD, by

21 MR. KEVIN J. O'BRIEN and

22 MR. JAMES I. RUBIN

23 On behalf of the Petitioner;

24 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by

25 MR. ROBB H. LAYMAN and

26 MS. BONNIE R. SAWYER

27 On behalf of the Respondent.

1

1	I N D E X					
2	WITNESS		DX	CX	RDX	RCX X
3	THOMAS M. GORMAN					
	By Mr. O'Brien	16			46	
4	By Mr. Layman			36		
	By Ms. Sawyer			44		
5	GEORGE W. NICHOLAS					
6	By Mr. O'Brien	48				
	By Mr. Layman			59		
7	By Ms. Sawyer			66		
8	CHRISTOPHER ROMAINE					
	By Mr. Layman	70			147	
9	By Mr. O'Brien			117		
	By Hearing Officer Edvenson					139
10	RONALD VanMERSBERGEN					
11	By Mr. Layman	149			195	
	By Mr. O'Brien			180		200
12	By Hearing Officer Edvenson					202

13

14 E X H I B I T S

15	NUMBER	MARKED FOR ID	RECEIVED
16	Petitioner's Exhibit		
17	No. 1	18	20
18	No. 2	19	20
19	No. 3	21	24
20			
21	Respondent's Exhibit		
22	No. 1	68	69
23	No. 2	69	70
24	No. 3	151	151

1 HEARING OFFICER EDVENSON: Good morning and
2 welcome. This is a contested case hearing
3 conducted by the Illinois Pollution Control Board,
4 Case No. 96-125 entitled Color Communications,
5 Incorporated vs. The Illinois Environmental
6 Protection Agency. The instant proceeding is in
7 the nature of a permit appeal.

8 My name is June Edvenson. I am the
9 hearing officer for this case. I will now request
10 that counsel for the parties enter their
11 appearances for the record.

12 MR. O'BRIEN: For petitioner Kevin O'Brien and
13 James Rubin.

14 MR. LAYMAN: For respondent Robb Layman and
15 Bonnie Sawyer.

16 HEARING OFFICER EDVENSON: Thank you. Have
17 counsel for the parties filed their appearances
18 with the board in writing?

19 MR. O'BRIEN: Yes.

20 MS. SAWYER: Yes.

21 MR. LAYMAN: Yes.

22 HEARING OFFICER EDVENSON: Okay. Now I'd like
23 to ask any other representatives of the parties or
24 the parties that are in attendance to identify

1 themselves for the record if they wish to do so.

2 MR. GORMAN: Tom Gorman from Color
3 Communications.

4 MR. NICHOLAS: George Nicholas from G. Nicholas
5 & Associates.

6 MR. ROMAINE: Chris Romaine from the Illinois
7 Environmental Protection Agency.

8 MR. PATEL: Minish Patel from Illinois
9 Environmental Protection Agency.

10 HEARING OFFICER EDVENSON: All right. Thank
11 you.

12 Are there any preliminary motions or
13 stipulations?

14 MR. O'BRIEN: Yes. We have a joint stipulation
15 of fact that has been agreed to by the respondent
16 and the petitioner.

17 There are 12 paragraphs of stipulations
18 that have been agreed to that we will enter as
19 joint stipulations of fact for this case.

20 HEARING OFFICER EDVENSON: All right. And I
21 will take a copy of that for the record. Has this
22 been filed with the clerk of the board today, or is
23 this being introduced --

24 MR. O'BRIEN: No, it has not as of yet.

1 HEARING OFFICER EDVENSON: All right. Were you
2 planning on making it a filing with the board, or
3 shall we just enter it in the record of the
4 hearing?

5 MR. O'BRIEN: I will just enter it in the
6 record if that's acceptable to counsel.

7 MR. LAYMAN: That's fine.

8 HEARING OFFICER EDVENSON: That's fine.

9 We will now turn to the order of the
10 hearing. Would either party like to make an
11 opening statement?

12 MR. O'BRIEN: I have a brief one.

13 HEARING OFFICER EDVENSON: Proceed.

14 MR. O'BRIEN: Do you prefer standing up or
15 sitting down?

16 HEARING OFFICER EDVENSON: You can sit.

17 MR. O'BRIEN: I'll sit.

18 Thank you, again. I'm Kevin O'Brien. I'm
19 one of the attorneys for the petitioner Color
20 Communications.

21 As we all know this is a permit appeal
22 taken from a notice of incompleteness issued by the
23 Illinois EPA for Color Communications' Clean Air
24 Act Permit.

1 The notice of incompleteness was issued
2 on November 2, 1995; and the issue raised by this
3 hearing in our mind is the agency's determination
4 that the two Color Communications' facilities in
5 Chicago constitute one single source for purposes
6 of air permitting.

7 Just to give some background which I think
8 is important about Color Communications so you
9 understand the context, Color Communications, or
10 CCI as we also refer to it, is headquartered in
11 Chicago and has two facilities here, as I
12 mentioned. They also have facilities in Ireland,
13 New Zealand, Mexico and New York State.

14 Again, it's the two Chicago facilities
15 that are at issue here; and they are located at
16 4000 West Filmore and 4242 West Filmore.

17 Now, today we are going to present
18 testimony that describes how CCI operates these
19 facilities and what goes on there; and you will
20 hear that at the 4242 facility CCI conducts what
21 it calls a color matching operation in which it
22 matches, mixes and weighs various bases, lacquers,
23 colorants, to match the specifications of their
24 customers. They are trying to get the color

1 right.

2 Some of these colors are then put on a
3 substrate, coated to a substrate; and the result
4 is what we call a web or a sheet with color coated
5 to it.

6 These sheets are either rolled up into
7 rolls or cut into sheets, and they are sent to a
8 variety of places.

9 Most of the material goes to the 4000 West
10 Filmore facility. Some of it goes to the plants in
11 Ireland and New Zealand.

12 Now, at the 4000 facility a different
13 function is performed. What the 4000 facility does
14 is that it assembles and prints what are known as
15 color boards; and Mr. Gorman will explain to you
16 what a color board is, but you've probably already
17 seen one if you've ever shopped for a new car or
18 tried to get a paint job for your house.

19 It's a brochure. You open it up. It will
20 have squares or small samples of paint with
21 different colors on it sometimes referred to as
22 paint chips.

23 What CCI does at the 4000 facility is that
24 it prints those brochures, cuts and assembles the

1 paint chips using the web that they produce at 4242
2 West Filmore and then put the finished product
3 together, they store it, they ship it out and they
4 deliver it to their customers.

5 So that is basically the process that
6 happens at the two facilities in Chicago.

7 You will also hear testimony that some of
8 this work is also done at CCI's other facilities
9 that I previously mentioned.

10 So that's the background on CCI.

11 And the issue here, as I mentioned, is
12 whether the two Chicago facilities constitute one
13 source for air permitting purposes.

14 And what we are dealing with is a
15 definition of "source," you know, found in the
16 regulations that really has three components as we
17 see it; and I'm just reading from Section 211.61.30
18 of 35 Illinois Administrative Code which is "Source
19 means any stationary source or any group of
20 stationary sources that are located on one or more
21 contiguous or adjacent properties and are under
22 common control of the same person or persons under
23 common control belonging to a single major
24 industrial grouping."

1 So from our point of view there are at
2 least three factors that go into determining
3 whether you have a source.

4 One is whether they are located on one or
5 more contiguous or adjacent properties; two is
6 whether they are under common control of the same
7 person; and three is whether they belong to a
8 single major industrial grouping.

9 Now, it's not disputed here that the two
10 facilities are under common control of the same
11 person. The dispute comes with regard to the two
12 other factors.

13 The first is the single major industrial
14 grouping.

15 Under the regulation it states that for
16 the purpose of defining source a stationary source
17 or group of stationary sources shall be considered
18 part of a single industrial grouping if all of the
19 pollutant emitting activity at such source or group
20 of sources on contiguous or adjacent property
21 belong to the same major group, i.e. all have the
22 same two-digit code, as described in the standard
23 industrial classification manual 1987.

24 We've plead and we will testify today that

1 the two facilities have different SIC codes which
2 benefits the different functions that they perform.

3 The 4242 Filmore facility has a
4 designation that is for paper coating, and the 4000
5 facility has a designation for commercial printing.

6 The two plants not only do different
7 things, but they do not belong to the same major
8 group. Their classifications do not have the same
9 two-digit prefix.

10 So under the regulation the two facilities
11 don't meet the criteria that's set out in the
12 regulation.

13 Now, the agency has argued and I believe
14 will argue again today that the 4242 Filmore
15 facility constitutes a support facility; and under
16 some proposed rules that I think of the USEPA a
17 support facility can be considered part of the same
18 source.

19 Even if that's illegally binding, and that
20 I think is a question of law, the third factor
21 that's involved here is another area where we feel
22 these facilities don't qualify as one source; and
23 that's whether they are on contiguous or adjacent
24 properties.

1 Mr. Gorman will explain and he will show
2 you on this photo that these facilities are not on
3 contiguous or adjacent properties.

4 There is a separate company, an
5 intervening company, that takes up the entire city
6 block of the 4100 block of West Filmore; and you
7 will hear that the Color Communications people have
8 no access and don't use that facility and pretty
9 much are like any other two buildings in the city,
10 if you want to get from one another you got to use
11 the city street.

12 And we maintain that under the definition
13 and under the way that the agency has treated this
14 definition that these are not contiguous or
15 adjacent properties.

16 And, again, you will hear testimony that
17 will describe how the functions occur on a
18 day-to-day basis.

19 These facilities have always been
20 separately treated for environmental permits
21 whether it be waste handling or air handling or air
22 permits or what have you.

23 By lumping them together in this way what
24 happens is that it imposes the standards of a major

1 source on both buildings.

2 Now, you will hear testimony from Mr.
3 Nicholas about the emissions that come from both
4 buildings; and not only are the functions of the
5 buildings different, but the amount of emissions
6 are radically different.

7 The 4242 facility, the coating facility,
8 is a major stationary source however you slice it,
9 whatever is added to it.

10 That building standing alone emits enough
11 volatile organic material that it's always going to
12 be considered a major stationary source.

13 The 4000 plant is a much different
14 animal. It is a printing press and a printing and
15 assembling facility, and it has very low emissions.
16 It would not qualify as a major stationary source
17 where considered separately.

18 What it does to combine the two sources is
19 to impose the requirements of a major stationary
20 source on the 4000 facility as well; and Mr.
21 Nicholas will explain how that is a real problem
22 for operations and a real problem for management
23 and development of the 4000 facility, and one that
24 we think is not justified by the regulations.

1 Just to sum up, it's our position that the
2 agency's position in this case indicated in its
3 notice of incompleteness that the two facilities
4 are actually one source is inconsistent with the
5 state regulations and should be overturned by the
6 PCB. Thank you.

7 HEARING OFFICER EDVENSON: Thank you, Mr.
8 O'Brien.

9 Mr. Layman?

10 MR. LAYMAN: Thank you.

11 For the record, the Illinois Environmental
12 Protection Agency as responded in this cause
13 believe that the testimony mentioned today from the
14 witnesses as well as the evidence contained in the
15 administrative record will support the agency's
16 notice of incompleteness of November 2, 1995.

17 The agency's notice of incompleteness has
18 been appealed by the petitioner Color
19 Communications pursuant to Section 40.2 of the
20 Environmental Protection Act. Petitioner bears the
21 burden of proof in this matter.

22 As will be shown from the administrative
23 record, the agency issued a notice of
24 incompleteness to Color Communications because of

1 its failure to submit a single CAAPP permit
2 application covering all emission units at the
3 source.

4 The agency believes that most of the
5 relevant facts presented in its case, as Mr.
6 O'Brien suggested in his opening statement, are not
7 in dispute.

8 Rather the issues presented to the board
9 for consideration are predominantly legal in nature
10 and revolve around the relevant statutory and
11 regulatory definitions of "source."

12 These issues to the extent that they are
13 touched upon today in hearing will subsequently
14 raise a legal argument or issue the first
15 impression to the board.

16 It occurs at a time when Illinois like
17 many other states are just beginning to implement
18 their own approved Title 5 permit program pursuant
19 to the provisions of the Clean Air Act.

20 The implication of the board's ruling
21 will, therefore, directly affect a threshold set of
22 criteria for CAAPP purposes.

23 The issues addressed in this case, of
24 course, are important to the parties to this

1 proceeding; but they may also assume a larger
2 significance for the Illinois codified program and
3 the regulated community.

4 The agency is confident that both the
5 evidence and the relevant law will support its
6 determination that the petitioner's operations at
7 the 4242 West Filmore Street and 4000 West Filmore
8 Street facilities today constitute a single
9 stationary source.

10 Petitioner's submittal of separate CAAPP
11 permits for each of the locations should,
12 therefore, not be deemed complete for purposes of
13 the agency's continued CAAPP application review.

14 The agency will present the testimony of
15 its own technical expert for new source review and
16 other permitting issues in Illinois for the purpose
17 of providing some insight into the agency's basis
18 for the notice of incompleteness.

19 The agency will also offer supporting
20 testimony from a national expert on air permitting
21 programs and procedures from the United States
22 Environmental Protection Agency of Region 5.

23 Thank you.

24 HEARING OFFICER EDVENSON: Thank you.

1 At this point let us proceed with the
2 petitioner's case-in-chief, and why don't you call
3 your first witness.

4 MR. O'BRIEN: We call Thomas Gorman.

5 HEARING OFFICER EDVENSON: Mr. Gorman, would
6 you please be sworn.

7 THOMAS M. GORMAN,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. O'BRIEN:

12 Q Could you state your name for the record,
13 please?

14 A Thomas Michael Gorman.

15 Q Mr. Gorman, are you employed?

16 A Yes, I am.

17 Q And where are you employed?

18 A At Color Communications, Incorporated.

19 Q How long have you been employed at Color
20 Communications, Incorporated?

21 A Since July of 1991.

22 Q If I refer to Color Communications,
23 Incorporated as CCI, will you understand that's
24 what I'm talking about?

1 A Sure.

2 Q What was your position at CCI when you
3 were first hired?

4 A I was hired as the director of loss
5 prevention and safety.

6 Q And what were your responsibilities in
7 that position?

8 A I was responsible for the corporate
9 security for all the facilities and also the safety
10 and OSHA compliance.

11 Q Now, have your responsibilities at Color
12 Communications stayed the same since you were hired
13 in 1991?

14 A No, they have not.

15 Q How have they changed?

16 A In January of 1994 I assumed the
17 responsibility for overseeing the company's
18 environmental affairs for permitting, waste
19 handling, reporting, et cetera.

20 Q Now, does that responsibility include
21 overseeing the permit that's at issue in this case,
22 the Clean Air Act Permit?

23 A Yes, it does.

24 Q Mr. Gorman, will you tell us what the

1 business of CCI is?

2 A Color Communications produces color
3 systems, color samples, color boards and marketing
4 color systems for paint, automotive and other
5 industries.

6 Q Now, you've brought some examples with you
7 today; and I'd like to mark the first one with what
8 the court reporter has given to me as Petitioner's
9 No. 1.

10 (Whereupon, Petitioner's
11 Exhibit No. 1 was marked for
12 identification.)

13 BY MR. O'BRIEN:

14 Q If you could describe for us what that is,
15 Petitioner's No. 1?

16 A This is an example of a color board that
17 we produce. You see it in paint hardware stores
18 and whatnot.

19 We do the printing of these boards, the
20 coating of the material and sometimes we even
21 design the layout for the customer. Everything is
22 coated, mounted, cut, assembled and then shipped to
23 the customer.

24 Q If you would like to pass that on,

1 somebody may want to take a look at it.

2 Now, you also mentioned color marketing
3 tools or devices. Do you have an example of that
4 with you?

5 A We do color marketing systems for paint
6 and automotive companies that produce, you know,
7 colors for all the car companies, produce colors
8 for all the paint companies and --

9 Q Before you continue let me --

10 A I'm sorry.

11 Q -- mark this next as Petitioner's No. 2
12 and ask you to describe that for the record.

13 (Whereupon, Petitioner's
14 Exhibit No. 2 was marked for
15 identification.)

16 THE WITNESS: This is more of a marketing
17 system that was produced for a company. We will
18 put together all the different colors that that
19 company manufactures, either for paint or
20 automotive customers, and market them as a total
21 overall system; and they use this in both body
22 shops, automotive dealers, they may use them in
23 stores as well.

24

1 BY MR. O'BRIEN:

2 Q Is there any name for the type of
3 marketing tool that we've marked as Petitioner's
4 No. 2?

5 A This particular one is a complete system.
6 It's called a fan deck, and you can fan it out and
7 see all the colors at once.

8 MR. O'BRIEN: And, again, anyone who would like
9 to take a look at that is welcome to it.

10 HEARING OFFICER EDVENSON: Is there any
11 objection to the introduction of Petitioner's
12 Exhibits 1 and 2 into evidence?

13 MR. LAYMAN: No, there is not.

14 HEARING OFFICER EDVENSON: All right. Thank
15 you.

16 (Whereupon, documents so offered
17 were received in evidence as
18 Petitioner's Exhibit Nos. 1 and
19 2.)

20 BY MR. O'BRIEN:

21 Q Now, Mr. Gorman, you mentioned that there
22 -- well, strike that.

23 Where are CCI's manufacturing facilities
24 located?

1 A We have two facilities in Chicago; and
2 also a facility in Castlereagh, Ireland; a facility
3 in Auckland, New Zealand; a facility in Mexico; and
4 two facilities one in Buffalo, New York and another
5 in Poughkeepsie, New York.

6 Q Okay. First at the Chicago facilities
7 what are the addresses of the two Chicago
8 facilities?

9 A We have one building at 4000 West Filmore
10 Street and another facility at 4242 West Filmore
11 Street.

12 Q Where are CCI's corporate offices located?

13 A At the 4000 West Filmore building.

14 Q Now, how long has CCI operated these two
15 facilities?

16 A At 4242 West Filmore since approximately
17 1979 and at 4000 since approximately 1990.

18 (Whereupon, Petitioner's
19 Exhibit No. 3 was marked for
20 identification.)

21 BY MR. O'BRIEN:

22 Q Mr. Gorman, I'd like to direct your
23 attention to this photo that we have over on the
24 wall here which we've now marked as Petitioner's

1 No. 3.

2 MR. O'BRIEN: Can everyone see this?

3 MR. LAYMAN: Uh-huh.

4 BY MR. O'BRIEN:

5 Q Let me ask you first if you recognize this
6 photograph.

7 A Yes, I do.

8 Q And how do you recognize this photograph?

9 A We received this from the City of
10 Chicago's Department of Planning & Development.

11 Q And what is the date of this photo?

12 A Spring 1994.

13 Q Was a copy of this photo attached to the
14 permit appeal as Exhibit B?

15 A Yes, it was.

16 Q Now, if you would, if you could show us on
17 Petitioner's Exhibit 3, if you would point out and
18 describe for us the location of the two CCI Chicago
19 facilities.

20 A The 4000 West Filmore building is here.
21 It occupies the city block right there, and there
22 is a parking facility right across the street to
23 the south.

24 Q What are the streets that surround the

1 4000 West Filmore facility?

2 A This is Pulaski over here and Karlov over
3 here.

4 Q And to the south?

5 A To the south is Filmore.

6 Q And is the 4000 West Filmore building
7 designated on Petitioner's 3 by a white label with
8 the words "4000 West Filmore" written on it?

9 A Yes, it is.

10 Q Could you locate for us or point out to us
11 the location of the other facility?

12 A This is 4242 West Filmore. The building
13 is not quite a block, and the parking area is just
14 to the east of the building.

15 Q Again, what streets surround the 4242
16 building?

17 A Kildare on the west and Keeler on the
18 east, and Filmore on the front on the south side.

19 Q Now, does this photo accurately reflect
20 the location of the two CCI facilities as of spring
21 1994 when it was taken?

22 A Yes, it does.

23 Q Have there been any changes in the
24 location of CCI Chicago facilities since spring

1 1994?

2 A No.

3 MR. O'BRIEN: I'd like to move Petitioner's
4 Exhibit 3 into evidence.

5 HEARING OFFICER EDVENSON: Is there any
6 objection?

7 MR. LAYMAN: No.

8 HEARING OFFICER EDVENSON: Thank you.

9 (Whereupon, document so offered
10 was received in evidence as
11 Petitioner's Exhibit No. 3.)

12 BY MR. O'BRIEN:

13 Q Now, again, referring to the photo,
14 Mr. Gorman, what is located directly to the west of
15 the 4000 West Filmore Street facility?

16 A In between the two buildings is a company
17 at 4100 West Filmore that's called the Ribbon
18 Webbing Corporation, and their buildings occupy
19 most of the block. They have a receiving area over
20 here, and then their parking lot is on the south of
21 Filmore there.

22 Q Is the parking lot for the Ribbon Webbing
23 Corporation fenced in?

24 A Yes.

1 Q Do CCI employees or representatives have
2 any access to that parking lot?

3 A No.

4 Q Do CCI employees or representatives have
5 any access to the Ribbon Webbing building?

6 A No.

7 Q If a CCI employee has to go from the 4000
8 facility to the 4242 facility or vice versa, how do
9 they get there?

10 A We have security people that are outside
11 at both buildings in vehicles, and what they will
12 do is they will pick up people at each building.

13 They will transfer them down to the other
14 building and also take production materials,
15 paperwork, things of that nature regarding the jobs
16 back and forth between the buildings.

17 Q Does CCI have any ownership interest in
18 the Ribbon Webbing Company?

19 A No.

20 Q Does the company have any interest in the
21 property where that facility sits?

22 A No.

23 Q Now, you've located the facilities for us
24 on the photo. I'd like for you to describe the

1 operations that are conducted at the facilities,
2 and if you'd start with the 4242 building.

3 A At 4242 West Filmore we conduct the
4 production of the color samples basically. We mix
5 the paint. We match the customer's colors to the
6 customer specifications. So the color matching
7 operation performs that.

8 And once the colors and the bases are
9 mixed some of that material goes to the coating
10 department, and the coating department will then
11 coat that paint on paper or whatever substrate it
12 might be; and then some other material will get
13 shipped to other facilities, the bases and colors
14 and some webs and coated sheets as well.

15 We also have some research and development
16 activities going on at 4242 for new products and
17 new things that we're working on.

18 Q You mentioned coating. What happens to
19 the material after the color is coated to the
20 substrate?

21 A The paint is placed on a roller via either
22 hand pouring or through a series of dyes. The
23 paint transfers from the roller onto a paper or a
24 different type of a substrate.

1 The paper goes through an oven at
2 approximately 150 degrees where the paint dries;
3 and then at the end of the process as it comes out
4 the other end it's rewound into rolls, and the
5 rolls then are either shipped to other facilities
6 or cut into sheets.

7 Q Now, you mentioned that some of the colors
8 and bases are shipped to other facilities. What
9 facilities are they shipped to?

10 A The colors and bases we ship latex bases
11 to New Zealand, we ship lacquer and latex bases
12 to Buffalo, and we ship lacquer bases also to
13 Poughkeepsie.

14 Q You also indicated that some of the coated
15 material was shipped. Where does that material get
16 shipped to?

17 A We send the Mexico plant some cut sheets
18 or coated sheets, we send the plant in Ireland some
19 of the actual rolls for coated webs, and we don't
20 send any of the webs to Buffalo or to
21 Poughkeepsie.

22 HEARING OFFICER EDVENSON: Mr. Gorman, when you
23 mention bases, are you speaking of liquid paint?

24 THE WITNESS: Yes. A base is kind of a

1 starting point for the color. They are generally
2 clear or white, and then the colorants are added to
3 the bases to actually make the color that you're
4 looking at.

5 HEARING OFFICER EDVENSON: Thank you.

6 BY MR. O'BRIEN:

7 Q Besides the Mexico plant and the Ireland
8 plant where else do you ship the coated product to
9 from the 4242 facility?

10 A The major source is the 4000 West Filmore
11 building where they do the finishing, the
12 assembling and the production of the color systems.

13 Q Now, again, you mention the assembly of
14 the color systems at 4000. Are any color boards
15 assembled at the 4242 facility?

16 A No.

17 Q Is there any printing done at the 4242
18 facility?

19 A No.

20 Q Are there any printing presses at the 4242
21 facility?

22 A No.

23 Q Mr. Gorman, are you familiar with the
24 concept of standard industrial classification

1 codes?

2 A Yes, I am.

3 Q And how are you familiar with that
4 concept?

5 A I've had to deal with those on some of the
6 annual waste reports that we produce.

7 Q Is there a classification that's been
8 designated for the 4242 facility as far as standard
9 industrial classification?

10 A Yes.

11 Q And what is that classification?

12 A We classified that as paper coating not
13 elsewhere classified, and I believe that's 26-72.

14 Q 26-72 is the numerical code for that
15 classification?

16 A Correct.

17 Q Now, you described the operations at
18 4242. I'd like you to turn your attention to the
19 4000 facility and describe what operations are
20 conducted there.

21 A At 4000 we do the printing of some of the
22 color cards. We also do the slitting or the
23 cutting of the rolls and sheets.

24 We also have a mounting and a laminating

1 department that actually puts the chips onto the
2 paper, and then we have a finishing and bindery
3 operation that cuts the paper and folds it and bags
4 it and packages it so that it can be shipped to the
5 customer.

6 Our shipping and receiving department
7 handles just that, the shipping and receiving of
8 all the different products.

9 And we also have a warehousing operation
10 at 4000 that deals with customer fulfillment. We
11 hold all of their excess inventories; and, when
12 they request it, then we will ship it to them from
13 that building.

14 Q Now, outside of the color boards and
15 display tools that you mentioned that use the
16 material from the 4242 plant, does the 4000
17 facility produce any other products for shipping
18 and distribution?

19 A Yes, we do.

20 Q And what would those be?

21 A They handle some jobs totally independent
22 of 4242 West Filmore.

23 We do some work for paper companies.

24 Paper companies will consign us to do their color

1 systems for the different types of paper and colors
2 of paper.

3 For those jobs we will receive the paper
4 direct and do the cutting, the chipping, the
5 mounting and the laminating, the bindery, all the
6 work at 4000 West Filmore and then ship from there
7 as well.

8 Q Is any coating done at the 4000 West
9 Filmore facility?

10 A No.

11 Q Are there any coating ovens at the 4000
12 West Filmore facility?

13 A No.

14 Q Now, you previously mentioned the other
15 manufacturing locations. What kind of
16 manufacturing is performed at the Castlereagh,
17 Ireland facility?

18 A In Castlereagh, Ireland we have a color
19 matching operation, we have a bindery and finishing
20 operation; and they have been doing that for a
21 little less than a year there.

22 Q And, as I understand your testimony,
23 Castlereagh, Ireland receives some of the coated
24 product from the 4242 plant; is that correct?

1 A Correct.

2 Q What kind of manufacturing takes place at
3 the facility in New Zealand?

4 A Auckland, New Zealand is pretty much a
5 self-contained color card company. They have a
6 coating operation. They have color matching. They
7 have bindery and finishing and mounting
8 capabilities there.

9 Q Does the New Zealand facility receive any
10 materials from the 4242 West Filmore plant?

11 A Yes. They receive some bases and
12 colorants from us.

13 Q So those would not be the finished coated
14 product, but they would be the colors and liquid
15 products we discussed earlier?

16 A Right.

17 Q What kind of manufacturing takes place at
18 the Mexico facility?

19 A Mexico has a color matching operation.
20 They have mounting capabilities down there. They
21 have a bindery and a finishing operation as well.

22 Q Do they receive any materials from the
23 4242 West Filmore plant?

24 A They have received some coated sheets from

1 us for their mounting.

2 Q The other two facilities are in New York
3 State, one in Buffalo. Can you explain what the
4 manufacturing is at Buffalo?

5 A Buffalo is strictly color matching. They
6 will match customers' colors to their
7 specifications.

8 Q Does the Buffalo plant receive any
9 materials from the 4242 West Filmore facility?

10 A Yes. They will receive some bases and
11 colorants from us.

12 Q And the last one is the facility in
13 Poughkeepsie, New York. Could you explain what
14 manufacturing occurs there?

15 A Poughkeepsie is designated as our color
16 standards division; and they have a coating
17 operation, a very small coating operation, along
18 with color matching; and they also are starting to
19 do some plastic sampling, matching customers'
20 colors on plastic.

21 Q Now, does the Poughkeepsie facility
22 receive any materials from the 4242 West Filmore
23 plant?

24 A Yes. They will receive some bases and

1 colorants from us as well.

2 Q Now, back to the 4000 facility. Has a
3 standard industrial code classification been
4 designated for the 4000 West Filmore facility?

5 A Yes, it has.

6 Q And what is that classification?

7 A It's been designated as commercial
8 printing NEC, not elsewhere classified.

9 Q And what's the numerical code for that?

10 A I believe it's 27-59.

11 Q And has that been the standard industrial
12 classification code for the 4000 facility for as
13 long as you have been at the company?

14 A Yes, it has.

15 Q I'd ask the same question, then, for the
16 standard industrial classification code of 26-72 at
17 the 4242 facility.

18 Has that been the same code for that
19 facility for as long as you have been with Color
20 Communications?

21 A Yes.

22 Q Mr. Gorman, has CCI ever applied to any
23 environmental agency for one permit to cover both
24 the 4000 West Filmore and 4242 West Filmore

1 facilities?

2 A Not to my knowledge.

3 Q And why not?

4 A We've always treated the two facilities as
5 doing entirely separate and independent functions.
6 They do totally different jobs completely.

7 Q Now, has any environmental agency of any
8 kind or any department ever issued a single permit
9 that covered both the 4000 and 4242 West Filmore
10 facilities?

11 A Not to my knowledge.

12 Q Do the 4000 and 4242 facilities have
13 separate permits for waste handling?

14 A Yes, they do.

15 Q And do they have separate permits for air
16 emissions?

17 A Yes, they have separate operating
18 permits.

19 MR. O'BRIEN: Bear with me for a minute.

20 (Pause.)

21 MR. O'BRIEN: I have no further questions at
22 this time.

23 HEARING OFFICER EDVENSON: All right. Then we
24 will proceed with the cross examination of the

1 witness.

2 CROSS EXAMINATION

3 BY MR. LAYMAN:

4 Q Mr. Gorman, are you aware of whether or
5 not Color Communications previously maintained a
6 manufacturing facility at a location other than
7 4000 or 4242 West Filmore Street?

8 A Since I have been there those have been
9 the two facilities that we've manufactured from;
10 but, yes, I was told that they had other buildings
11 in the area that they used prior to my coming
12 there.

13 Q Since your coming to the Color
14 Communications facility you have not worked with
15 or been responsible for activities at those
16 manufacturing facilities --

17 A No.

18 Q -- is that correct?

19 Are you aware of whether those
20 manufacturing facilities for Color Communications
21 at other than those locations for 4242 and 4000
22 West Filmore Street are still in operation or
23 existence?

24 A There is no manufacturing that's going on

1 at any of the other ones.

2 Q Okay. Are you aware of the location of
3 manufacturing facilities owned or operated by CCI
4 prior to your coming to their company?

5 A I knew that they had other buildings in
6 the area that they used to work out of.

7 Q Do you know --

8 HEARING OFFICER EDVENSON: Gentlemen, could you
9 both speak up a little bit more for the benefit of
10 others in the room? Thank you.

11 BY MR. LAYMAN:

12 Q Are you aware of where those locations
13 would have been?

14 A Not exact addresses on all those
15 locations, no.

16 Q Were you or at any time have you been
17 aware of a manufacturing facility previously
18 operated by Color Communications at 917 South
19 Kildare?

20 A I had heard they had a building on
21 Kildare.

22 Q When to your knowledge did Color
23 Communications purchase the 4000 West Filmore
24 Street facility?

1 A It was either in 1990 or 1989, I believe.
2 It was prior to my coming there.

3 Q Do you know when manufacturing operations
4 actually began?

5 A I believe it was 1990.

6 Q Are you aware of when the building at 4242
7 West Filmore Street was purchased?

8 A I believe they have been operating there
9 since 1979.

10 Q What emission units have generally been
11 operated at the 4242 facility?

12 A We have coating machines. We have
13 emission units, mostly fugitive emissions from the
14 color matching operation, and the weighing and
15 paint manufacturing areas. But the coating
16 machines are major sources.

17 Q Can you tell us, Mr. Gorman, as to how
18 Color Communications arrived at a SIC code
19 classification for the 4242 facility?

20 A It's coating. We could not find anything
21 else that we saw in those codes that would classify
22 it as anything else but not elsewhere classified.

23 Q Do you know whether or not a SIC code for
24 the 4242 facility has ever been assigned to you --

1 to the company by a governmental agency or anyone
2 else?

3 A Not that I'm aware of.

4 Q The same response, I take it, would be
5 true for the SIC codes identified or classified for
6 the 4000 facility as well; is that correct?

7 A Correct.

8 Q Is it fair to say that there is some
9 degree of care exercised by Color Communications in
10 insuring the efficient coating of materials at the
11 4242 facility?

12 A Yes.

13 Q What kind of quality control measures are
14 undertaken at the 4242 facility?

15 A Quality control from what standpoint?

16 Q Just in insuring efficient coating, good
17 quality coating, et cetera.

18 A Everything is tested and sampled when it
19 first comes into the building by the research and
20 development department -- the paints, the different
21 material used in the bases, the papers, the
22 plastics, the tissues.

23 Any material that will go into the makeup
24 of a color card or the coating material is tested

1 to make sure that it falls within our parameters
2 that are necessary to let us do our job properly.

3 Q Is there any kinds of quality control
4 measures undertaken with products that are coated
5 at the 4242 facility prior to them being
6 transferred to the 4000 facility?

7 A The people at the rewind end of the
8 coating machines --

9 Q Uh-huh.

10 A -- as they are there they see the coating
11 as it comes out of the machine; and what they will
12 do is they will flag or put a little marker on the
13 roll to indicate if there is some imperfections in
14 the roll, so that when the webs get over to 4000
15 West Filmore those will be easily seen and cut out.

16 Q I take it, then, from your response there
17 will be some quality control measures that are
18 implemented or undertaken at the 4000 facility for
19 materials coming from the 4242 facility?

20 A Correct.

21 Q Are there any other quality control
22 measures you can think of that would be implemented
23 to screen materials coming in from 4242 to the 4000
24 facility?

1 A I think the same would be true also on the
2 coated sheets as well because we do send coated
3 sheets over there. They will mark them or flag
4 them if there is imperfections on them.

5 Q Are there any particular job or coating
6 specifications that must be considered by the
7 company at the 4242 facility before they can be
8 processed in any way at the 4000 facility?

9 A I'm not sure I understand the question.

10 Q Are there certain processes at the 4000
11 facility either as it relates to printing or
12 cutting of materials that have to be considered
13 before you coat the materials at the 4242 facility?

14 A Well, a customer will give us
15 specifications for a job as far as the size of the
16 chips and whatnot; and then we have to put together
17 a job packet for that job as far as what has to be
18 done in every department, and then those departments
19 will follow those instructions.

20 Q The overall purpose is to have or arrive
21 at an overall schematic or I believe you referred
22 to it earlier as an overall marketing scheme, in
23 other words?

24 A Whatever that color card or marketing

1 system's got to look like, and it's important that
2 everybody on board knows what they are supposed to
3 do to perform the job.

4 Q Okay.

5 A There is one other quality control that we
6 do in the 4242 building. That is that the people
7 in the coating department once the paint is on the
8 paper or the substrate, it goes through oven.

9 After it's dried and comes out the end of
10 the oven, we will take a sample of that coating;
11 and we will analyze it under a computer for the
12 right colors and tints and lights and so forth to
13 make sure that it hasn't changed in the coating
14 process and in the drying process.

15 So that gives us a pretty good indication
16 that the paint that we've got is going to stand up
17 to the coating process and give us the right color.

18 Q Are there any production units at the 4000
19 facility that may be limited in their capabilities
20 given certain types of coatings or specifications
21 at the 4242 facility?

22 MR. O'BRIEN: Let me object here just for the
23 record because I'm not sure what you mean by
24 production units. Could you maybe explain that?

1 MR. LAYMAN: I can rephrase the question.

2 HEARING OFFICER EDVENSON: Why don't we try
3 that.

4 BY MR. LAYMAN:

5 Q Are there any manufacturing processes,
6 including printing and cutting of materials at the
7 4000 facility, that will have to be on occasion
8 modified or will not be able to be used because of
9 certain materials that are coated at the 4242
10 facility?

11 A I would have to say no. The coating can
12 always be slit or cut out if it's not to standard.
13 So we can -- we usually produce more coating than
14 what we need for a job so that we always have a
15 little overage there, and there is generally always
16 enough of that color to make the different chips or
17 rolls.

18 Q It is fair so say, is it not, that you
19 will know in advance -- Color Communications will
20 know in advance as to how both the coatings in
21 terms of specifications will be applied at the 4242
22 facility as well as how they will be printed or cut
23 or put together in brochures, the final product at
24 the 4000 facility?

1 A Everybody has instructions for how to do
2 their particular aspect of the job.

3 Q Before coatings are conducted on a
4 particular job at the 4242 facility the company
5 already knows what that final product is supposed
6 to look like based on a customer request or some
7 other reason; is that correct?

8 A I would say in most cases that's true.
9 There is always going to be some things that may
10 change down the road, but generally I would say
11 that's accurate.

12 MR. LAYMAN: Just a moment, please.

13 HEARING OFFICER EDVENSON: Okay.

14 MS. SAWYER: Can I take a look at one of these
15 exhibits here?

16 CROSS EXAMINATION

17 BY MS. SAWYER:

18 Q I have Petitioner's Exhibit No. 1.

19 MR. RUBIN: Are we doing dual questioning?

20 MR. O'BRIEN: Is this your question now,

21 Ms. Sawyer?

22 MS. SAWYER: Yes.

23 MR. O'BRIEN: Okay.

24 BY MS. SAWYER:

1 Q Just if you could take a look at one of
2 the coated or the colors indicated here, one of the
3 paint chips, sugarplum perhaps.

4 A Okay.

5 Q When you coat that chip at the 4242
6 facility, is it identified with the name of the
7 color?

8 A What they will do -- I don't know exactly
9 what order this was coated or how it was coated.
10 But they will coat it on either a 40-inch web or a
11 60-inch wide web; and they may just this color
12 across the web, or they may have six colors across
13 the web depending on how the job is laid out.

14 But at the end of the -- when the roll is
15 finished and it's wound up or the sheets are cut,
16 they will market at the 4242 building with what
17 colors are on there or the form that's being coated
18 basically on that job. They are making more than
19 one form on a job because of the different colors
20 that are involved.

21 Q And then at the 4000 facility the cards
22 will be printed with the different names of the
23 coatings?

24 A Correct.

1 Q And they will attach the color chips to
2 the cards essentially?

3 A Correct. After the material is printed,
4 then the coating gets placed on it at that point in
5 this particular case.

6 MR. LAYMAN: I believe that's it.

7 MS. SAWYER: No further questions.

8 HEARING OFFICER EDVENSON: Okay. Is there any
9 redirect?

10 MR. O'BRIEN: Very brief.

11 REDIRECT EXAMINATION

12 BY MR. O'BRIEN:

13 Q With regard to the questions you were
14 asked about quality control, are materials that
15 come into the 4000 facility other than those that
16 originate at the 4242 facility checked for quality
17 control?

18 A Yes.

19 Q And what kind of materials would those be?

20 A Printed material. Paper stock. Glues.

21 Q And this quality control is conducted by
22 personnel at the 4000 facility, correct?

23 A Correct.

24 Q The other question Mr. Layman asked you

1 about the SIC codes or the S-I-C codes, I believe
2 your testimony was is that you have used those
3 SIC codes on permitting and submissions to
4 environmental agencies; is that correct?

5 A Correct.

6 Q Have any environmental agencies ever
7 objected to the SIC codes that have been used for
8 either of the 4000 or 4242 facilities?

9 A No.

10 MR. O'BRIEN: I have nothing further.

11 HEARING OFFICER EDVENSON: Is there any
12 recross?

13 MR. LAYMAN: No.

14 HEARING OFFICER EDVENSON: All right. Thank
15 you, Mr. Gorman.

16 THE WITNESS: Thank you.

17 MR. O'BRIEN: You are excused.

18 (Witness excused.)

19 HEARING OFFICER EDVENSON: At this point why
20 don't we take about a five-minute recess, and then
21 we will come back with petitioner's next witness.

22 MR. O'BRIEN: Thank you.

23 (Recess taken.)

24

1 HEARING OFFICER EDVENSON: Back on the record,
2 and we are ready for petitioner's second witness.

3 MR. O'BRIEN: We're calling George Nicholas.

4 HEARING OFFICER EDVENSON: Mr. Nicholas, would
5 you please be sworn?

6 THE WITNESS: George W. Nicholas.

7 GEORGE W. NICHOLAS,
8 called as a witness herein, having been first duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. O'BRIEN:

12 Q Just again for the record please state
13 your name.

14 A George W. Nicholas.

15 Q Mr. Nicholas, are you employed?

16 A Yes, I am.

17 Q And where are you employed?

18 A My company is G. Nicholas & Associates,
19 Incorporated.

20 Q And how long have you been with G.
21 Nicholas & Associates?

22 A Since July of 1993.

23 Q What's your position with that company?

24 A I'm president and principal air quality

1 consultant.

2 Q What are your typical job duties as an air
3 quality consultant for G. Nicholas & Associates?

4 A My typical duties are to provide emission
5 calculations, dispersion modeling, air quality
6 permitting and the normal things that go with air
7 quality oriented work.

8 Q For whom do you provide these services?

9 A I provide them to industrial clients that
10 I have.

11 Q Now, prior to working for G. Nicholas &
12 Associates where did you work?

13 A I started in air quality consulting work
14 in February 1972 at Sargent & Lundy Engineers.

15 Q And where was that located?

16 A Here in Chicago down the street.

17 Q And what was your position with Sargent &
18 Lundy?

19 A I was an air quality consultant.

20 Q Did you perform at Sargent & Lundy the
21 same function you are now performing at G. Nicholas
22 & Associates?

23 A Basically, yes.

24 Q How long were you with Sargent & Lundy

1 Engineers?

2 A I was there approximately three years.

3 Q That would be until about 1975?

4 A Yes.

5 Q After that where did you work?

6 A After that I worked for 15 years for Dames
7 & Moore.

8 Q Dames, D-a-m-e-s?

9 A D-a-m-e-s, and Moore, M-o-o-r-e.

10 Q And what was your position with Dames &
11 Moore?

12 A I was also an air quality consultant.
13 During that period of time I also managed Dames &
14 Moore's office here in Chicago.

15 Q Again, was your job as an air quality
16 consultant the same duties and functions you are
17 now performing with G. Nicholas & Associates?

18 A Yes, it was.

19 Q And after working at Dames & Moore where
20 did you work?

21 A I worked at Roy F. Weston, Inc.

22 Q And what was your position at Roy F.
23 Weston, Inc.?

24 A It was the same as the other group, air

1 quality consultant services.

2 Q Again, performing the same types of
3 services that the other two places that you had
4 worked previously?

5 A Yes.

6 Q And how long did you work for Roy F.
7 Weston, Inc.?

8 A Approximately three years.

9 Q And that takes us up to G. Nicholas &
10 Associates, correct?

11 A Correct.

12 Q Can you tell us your educational
13 background after high school?

14 A Yes. I have a bachelor's degree in
15 mathematics and master's degree in meteorology.

16 Q Now, are you or your firm currently
17 engaged by Color Communications?

18 A Yes, we are.

19 Q In what capacity?

20 A As an air quality consultant providing air
21 quality permitting and other types of air quality
22 services.

23 Q When were you first hired by Color
24 Communications?

1 A July of 1993.

2 Q And, again, the same as with Mr. Gorman.
3 If I use the term CCI, you will understand that to
4 mean Color Communications? Is that acceptable?

5 A Yes, it is.

6 Q Have you assisted CCI in preparing and
7 submitting applications for air permits?

8 A Yes, I have.

9 Q What was the first air permit that you
10 assisted CCI in preparing?

11 A We prepared a permit application for the
12 4000 West Filmore Street facility for the operation
13 of their printing machines, their coaters, their
14 laminators and other finery type equipment.

15 Q And when was this prepared?

16 A It was prepared in March of 1994.

17 Q Was this permit application approved by
18 the agency? Was a permit issued?

19 A Yes. The permit was issued June 15, 1994.

20 Q And this was covering emissions units at
21 the 4000 West Filmore facility, correct?

22 A That's correct.

23 Q Now, prior to this permit for 4000 being
24 issued by the agency on June 15th had Illinois EPA

1 previously issued a separate operating air permit
2 for the 4242 West Filmore facility?

3 A Yes. I've seen copies of the permits.
4 The initial one was issued around 1979 when they
5 bought the 4242 Street facility. But then it was
6 renewed in 1983, 1988, then again in 1995.

7 Q And that permit covered emissions units at
8 the 4242 West Filmore facility; is that correct?

9 A That's correct.

10 Q Now, after the permit for the 4000 West
11 Filmore facility was issued in June of 1994, did
12 CCI file another permit application for that 4000
13 West Filmore facility?

14 A Yes, we did.

15 Q What was the nature of that permit
16 application?

17 A That permit application was really to
18 construct and operate a laminating, what we call,
19 mounting machine and to then also include some
20 equipment that was left out of the original permit
21 issued on June 15th.

22 Q What kind of equipment are you referring
23 to that had been, as you say, left out of the
24 permit that had been issued on June 15th?

1 A It was some of the cutting machines,
2 stitching machines. Mostly the machines that went
3 into the bindery operation.

4 Q And these are all machines that are
5 located at the 4000 West Filmore facility?

6 A That's correct.

7 Q Now, this permit application, was this
8 permit eventually issued by the Illinois EPA?

9 A Yes, it was.

10 Q When was that?

11 A It was May the 3rd of 1995.

12 Q Mr. Nicholas, have you ever assisted CCI
13 in preparing permit applications for the 4242 West
14 Filmore facility?

15 A Yes, I have.

16 Q Can you explain the circumstances behind
17 that?

18 A Yes. There were two permit applications
19 submitted in September of 1994.

20 One was for the installation and operation
21 of an afterburner that served the control on
22 coating lines two and three.

23 The other application was for the
24 operation, basically the coating lines and their

1 ovens located at 4242 and operating permit.

2 Q What was the response to those permit
3 applications?

4 A The afterburner permit -- well, they
5 issued permits in three separate ones.

6 The first one was for the afterburner, and
7 it was issued in November of 1995. I'm sorry,
8 November 1994.

9 The second one was for the two boilers
10 that exist at 4242, and it was issued in December
11 of 1994.

12 Now, the operation of the coating lines
13 and their ovens was issued in May of 1995.

14 Q Now, the three permits that you just
15 mentioned as being issued those all were for
16 emissions units at the 4242 West Filmore facility;
17 is that correct?

18 A That's correct.

19 Q So in May 1995 I believe your testimony is
20 that IEPA issued at least one operating permit
21 covering the 4000 West Filmore facility and a
22 separate operating permit covering the 4242 West
23 Filmore facility; is that correct?

24 A That's correct.

1 Q Now, Mr. Nicholas, can you tell us what
2 the annual emissions volatile organic materials are
3 from the 4242 facility in terms of tons?

4 A Yes. They are approximately 150 tons per
5 year.

6 Q And, if the 4242 facility were considered
7 a source standing alone, would it be considered a
8 major stationary source by under the applicable
9 regulations?

10 A Yes, it would.

11 Q And why is that?

12 A Because their emissions are greater than
13 25 tons per year which defines a source to be major
14 here in Chicago ozone nonattainment area.

15 Q With regard to the 4000 West Filmore
16 facility can you tell us in tons per year what the
17 annual emissions of VOM are from that facility?

18 A It's approximately 10 tons per year.

19 Q Now, if the 4000 facility were considered
20 an independent source standing alone, would it be
21 considered a major stationary source under the
22 applicable regulations?

23 A No, it would not.

24 Q And why is that?

1 A Well, because their actual and volatile
2 emissions are less than 25 tons per year to define
3 it as a major source.

4 Q Now, Mr. Nicholas, what are the practical
5 ramifications for CCI of treating these two
6 facilities as one source for air permitting
7 purposes?

8 A Well, the ramifications are that put
9 together as one source both facilities would be
10 considered as major sources and which would negate
11 the minor source designation for the 4000 Street
12 facility.

13 Q What would being designated as a major
14 source or part of a major source mean for the
15 operations of the 4000 West Filmore facility?

16 A Well, for the 4000 West Filmore Street
17 facility they would be considered as a major source
18 for any future equipment and having to deal with
19 emissions for it; and -- well, that's basically it.

20 Q What kind of restrictions would be placed
21 on the 4000 facility as a result of being
22 considered part of a major stationary source?

23 A Well, the restrictions would be basically
24 that for any increase in emissions they would have

1 to go through the new source review regulations
2 which are basically together one point three to one
3 emission offsets and exercise those achievable
4 emission rate technology.

5 Q Now, does imposition of this major
6 stationary source standard on the 4000 West
7 facility offer any significant control of air
8 emission?

9 A No, it doesn't. It doesn't offer us any
10 significant control.

11 Q And why is that?

12 A Well, basically for two reasons. One is
13 that the equipment that would be put there define
14 it as modification is very, very small.

15 The permit that we got for the one
16 mounting machine that was less than four-tenths of
17 a ton per year in VOM emissions, and that's the
18 order with which the emissions would be increased
19 at that facility.

20 Q What would happen if the company wanted to
21 add a significant new unit that would emit a fairly
22 high amount of volatile organic materials in terms
23 of tons per year at the 4000 West Filmore facility?

24 A Well, it would be restricted as a major

1 stationary source if emissions would increase to
2 25 tons per year the same as it would for 4242.

3 Q So are you saying if the total emissions
4 put out by the 4000 facility went over 25 tons per
5 year it would then come under the major source
6 restrictions?

7 A That's correct.

8 MR. O'BRIEN: Bear with me for a minute.

9 (Pause.)

10 MR. O'BRIEN: I don't have any further
11 questions at this time.

12 HEARING OFFICER EDVENSON: Then we will have
13 the cross examination by respondent.

14 CROSS EXAMINATION

15 BY MR. LAYMAN:

16 Q Mr. Nicholas, are you familiar with any
17 manufacturing facilities that had previously been
18 operated by Color Communications prior to, say,
19 1990 or 1991?

20 A No, I'm not familiar with any.

21 Q You're not familiar with a previous Color
22 Communications facility that had been operated at
23 917 South Kildare?

24 A No, I'm not.

1 Q Okay. Did you take part in preparing a
2 permitting protocol that was submitted to the
3 agency on behalf of Color Communications through G.
4 Nicholas & Associates on or around December 27,
5 1993?

6 A Yes, I was.

7 Q Would it refresh your memory possibly to
8 review a paragraph in that submittal detailing the
9 existence of a previous facility at that address?

10 A At 917?

11 Q That's correct. Would it refresh your
12 memory to look at this?

13 A Yes, I think it would.

14 Q Okay. Let me find the correct page.

15 A Yes.

16 Q You can, in fact, then state with some
17 reasonable degree of certainty that there was a
18 manufacturing facility owned by Color
19 Communications at that address?

20 MR. O'BRIEN: Just for as a point of
21 clarification, are you asking for his personal
22 knowledge or what basis are you looking for?

23 MR. LAYMAN: Just a general recognition that,
24 in fact, Color Communications owned or operated

1 that facility sometime prior to the submittal.

2 THE WITNESS: That was information that was
3 given to me by Color Communications, yes.

4 BY MR. LAYMAN:

5 Q Okay.

6 HEARING OFFICER EDVENSON: Perhaps the parties
7 could agree to stipulate to that.

8 MR. O'BRIEN: We can discuss that.

9 MR. LAYMAN: Okay.

10 BY MR. LAYMAN:

11 Q You mentioned earlier that if the 4000
12 West Filmore Street facility were to be considered
13 a source in and of itself that it would be
14 considered a non-major source?

15 A That's correct.

16 Q Can you identify the reason as to why
17 Color Communications submitted a separate CAAPP
18 application for the 4000 facility in light of the
19 fact that it fell or would fall underneath that
20 25 ton applicability threshold?

21 A Well, we considered the two sources to be
22 separate sources.

23 Q That's correct. But you are aware, are
24 you not, that a CAAPP permitting threshold, a

1 threshold by which you would require a CAAPP
2 permit, is of 25 tons; and in this case the 4000
3 facility would be below that? Can you identify a
4 reason as to why a CAAPP application was sought?

5 A I think to cover the bases that, you know,
6 there is two separate facilities.

7 Q Are you aware of any future plans or
8 intent on the part of Color Communications to
9 expand its operations at the 4000 facility?

10 A I'm not aware of any.

11 Q You indicated that if new emissions units
12 or production facilities were installed at the 4000
13 facility that any significant increases in VOM
14 might trigger new source review requirements; is
15 that correct?

16 A That's a possibility of that.

17 Q You also indicated that there would be
18 some restrictions associated with any economic
19 development at the 4000 facility?

20 A Yes.

21 MR. O'BRIEN: Excuse me. I'm sorry. Economic
22 development?

23 MR. LAYMAN: I can rephrase that.

24 MR. O'BRIEN: Yeah. Can you rephrase that

1 question?

2 HEARING OFFICER EDVENSON: Can you clarify your
3 question?

4 BY MR. LAYMAN:

5 Q You indicated that there might be
6 restrictions on any new production units or
7 emission units developed or installed at the 4000
8 facility at some point in the future.

9 MR. O'BRIEN: Let me make one more point of
10 clarification, if you don't mind. This is assuming
11 that 4000 is being treated as a single source?

12 MR. LAYMAN: That is correct.

13 MR. O'BRIEN: Okay.

14 MR. RUBIN: A single source with 4242?

15 MR. LAYMAN: A single source in and of itself.

16 MR. O'BRIEN: In and of itself.

17 MR. LAYMAN: Hypothetically.

18 MR. O'BRIEN: Hypothetically.

19 THE WITNESS: Yeah. There's possibilities of,
20 you know, putting in a new mounting machine; or
21 there's a possibility, I suppose, in the future
22 could install a new printing line. But each of
23 these kinds of sources would really result in very
24 small VOM emission increases.

1 BY MR. LAYMAN:

2 Q Isn't it true that under the new source
3 review requirements of state and/or federal law
4 there isn't a restriction on any increases in the
5 Chicago metropolitan area for ozone but rather
6 increases as they might otherwise constitute a
7 major modification?

8 MR. O'BRIEN: I'm going to object to the form
9 of that question. I don't really understand what
10 you mean by increases for ozone. Are you referring
11 to increases of VOM?

12 MR. LAYMAN: Yes.

13 MR. O'BRIEN: Okay. Maybe you could rephrase
14 it --

15 MR. LAYMAN: I can rephrase.

16 MR. O'BRIEN: -- so I can understand it.

17 BY MR. LAYMAN:

18 Q You indicated in your testimony that any
19 increase at the 4000 facility might trigger new
20 source review?

21 A Correct.

22 Q Isn't it true that that's not the case but
23 rather that any increase in excess of 25 tons of
24 VOM, volatile organic material emissions, would

1 impose possible restrictions?

2 A If two facilities are one source, we
3 should understand that, you know, the
4 contemporaneous period of adding emissions has
5 already been used; so any increase would then fall
6 under the new source review regulations.

7 Q Okay. You understand that regardless of
8 whether you treat both facilities as one source or
9 whether you treat them as separately that new
10 source review contemplates looking at only a net
11 emissions increase?

12 A That's correct.

13 Q In doing so you would, therefore, account
14 for any emission offsets or decreases that would
15 have occurred within that contemporaneous five-year
16 period?

17 A That's correct, yes.

18 MR. LAYMAN: If I may have just a moment to
19 confer.

20 (Pause.)

21 MS. SAWYER: I've got a couple of questions.

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CROSS EXAMINATION

BY MS. SAWYER:

Q You testified, I believe, that there was a netting exercise that took place at CCI's facility, is that correct, previously?

A Not for any form of the submittals.

Q Okay. You made some reference to a contemporaneous period already being used. What did you mean by that?

A Well, if we did go through a committing exercise for new equipment, you know, for construction of the new equipment, that we would have to look at that contemporaneous period and count the net emissions.

Q Okay. So your response was just a hypothetical --

A Hypothetical.

Q -- future sort of situation. I just wanted to clarify that.

MR. LAYMAN: I believe we have no further questions.

HEARING OFFICER EDVENSON: Is there any redirect?

MR. O'BRIEN: No.

1 HEARING OFFICER EDVENSON: Thank you very much,
2 Mr. Nicholas.

3 (Witness excused.)

4 HEARING OFFICER EDVENSON: At this point why
5 don't we take our lunch break, then we will come
6 back with the continuation of the case.

7 (Whereupon, a luncheon break
8 was taken.)

9

10 * * * * *

11

12 HEARING OFFICER EDVENSON: We're back on the
13 record. Petitioner's case-in-chief has been
14 concluded, and do we have any additional
15 stipulations?

16 MR. O'BRIEN: We do. The petitioner and
17 respondent have entered a document which we have
18 entitled "Second Set of Joint Stipulations of
19 Fact," which I am handing to the hearing officer.
20 There are five additional stipulations numbered 13
21 through 17 following the first set of one through
22 twelve that we tendered this morning.

23 HEARING OFFICER EDVENSON: Well, thank you very
24 much for your prompt response to that inquiry; and

1 I believe we are ready, then, for respondent's
2 case-in-chief. Do you want to call your first
3 witness?

4 MR. LAYMAN: Sure. By way of a preliminary
5 matter I'd like to note for the record that the
6 parties are willing to stipulate to the
7 admissibility of what will be marked I think now
8 Respondent's Exhibit 1 if that's acceptable, the
9 administrative record.

10 We have three volumes, so shall we mark
11 them accordingly each?

12 HEARING OFFICER EDVENSON: Let's create one
13 Respondent's Exhibit 1 --

14 MR. LAYMAN: Okay.

15 HEARING OFFICER EDVENSON: -- that includes all
16 three volumes; and then if you need to refer to
17 page number you might preface that with the volume
18 number.

19 MR. LAYMAN: Okay.

20 (Whereupon, Respondent's
21 Exhibit No. 1 was marked for
22 identification.)

23 HEARING OFFICER EDVENSON: Then the agency
24 record is admitted into evidence as Respondent's

1 Exhibit 1.

2 MR. LAYMAN: Okay.

3 (Whereupon, document so offered
4 was received in evidence as
5 Respondent's Exhibit No. 1.)

6 MR. LAYMAN: I'd like also to move for
7 admission of a map of the more generalized area.
8 It's taken from the Chicago vicinity six-county
9 street map guide published by Rand McNally.

10 I have copies for both Mr. O'Brien and the
11 hearing officer and then the board exhibit itself.

12 So this would be designated as
13 Respondent's Exhibit 2, I believe.

14 (Whereupon, Respondent's
15 Exhibit No. 2 was marked for
16 identification.)

17 HEARING OFFICER EDVENSON: All right. Is there
18 any objection to the introduction of this map as
19 Respondent's Exhibit 2?

20 MR. O'BRIEN: We don't have any objection. I
21 wonder if it might be more appropriate to admit it
22 at the time it is discussed. I don't think we are
23 going to have any objection to it, but for whatever
24 that's worth.

1 MR. LAYMAN: Okay.

2 HEARING OFFICER EDVENSON: For simplicity sake
3 let's admit it at this time as Respondent's Exhibit
4 2, and if an objection arises you can raise it
5 later.

6 MR. O'BRIEN: Fine.

7 (Whereupon, document so offered
8 was received in evidence as
9 Respondent's Exhibit No. 2.)

10 MR. LAYMAN: The respondent calls Mr.
11 Christopher Romaine.

12 HEARING OFFICER EDVENSON: Mr. Romaine, would
13 you please be sworn.

14 CHRISTOPHER ROMAINE,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LAYMAN:

19 Q Mr. Romaine, would you state your name for
20 the record again, please?

21 A My name is Christopher Helton (phonetic)
22 Romaine.

23 Q Would you state your occupation?

24 A I am an environmental engineer employed

1 by the Illinois Environmental Protection Agency
2 Division of Air Pollution Control.

3 Q Could you describe, if you will, your
4 educational background since high school?

5 A I have a Bachelor of Science in
6 engineering and a Bachelor of Arts in art from
7 Brown University.

8 I've completed course work toward a
9 master's of environmental engineering at Southern
10 Illinois University Carbondale.

11 Q When did you start work for the Illinois
12 Environmental Protection Agency?

13 A In June of 1976.

14 Q What was your role and title with the
15 agency at that time?

16 A I was an analyst in the Division of Air
17 Pollution Control permit section, a junior level
18 analyst.

19 Q Where did you move up from there in terms
20 of your employment with the agency?

21 A Well, I raised in seniority as an analyst;
22 and I'm currently manager of the new source review
23 unit in the air permit section.

24 Q What is your designated role as manager of

1 that unit or section?

2 A Well, the principal role of that unit is
3 to assist in the proper implementation of various
4 programs for new and modified sources of air
5 pollution control.

6 That the Federal Clean Air Act mandates
7 and also establishes additional programs for new
8 equipment called new source performance standards.

9 It also has a prevention of significant
10 deterioration program and provisions for major
11 construction activities in nonattainment areas.

12 My goal or role in the permit section is
13 to evaluate changes in those programs and to make
14 sure the permit section is properly implementing
15 them.

16 As part of that activity I would be
17 involved in rule changes for the board to the
18 extent that rule-making is necessary.

19 I will be involved in-house training of
20 analysts. I would also be involved in assisting
21 analysts in the day-to-day review of specific
22 applications.

23 As manager of the new source review unit
24 I've also been involved in a multitude of other

1 activities.

2 I've gotten involved in some of the
3 regulatory activities for volatile organic material
4 emissions.

5 I've also assisted in development of the
6 Clean Air Act Permit Program for the State of
7 Illinois.

8 Q How long have you been employed in your
9 position as a new source review manager?

10 A I believe 12 or 13 years.

11 Q As part of your present work
12 responsibilities have you become very familiar with
13 many, if not most, of the Clean Air Act programs
14 and requirements?

15 A I have become very familiar with the
16 permitting programs for stationary sources of air
17 pollution under the Clean Air Act.

18 I am definitely not an expert in things
19 like vehicle inspection, maintenance and
20 transportation control measures. My area of
21 expertise is dealing with stationary sources.

22 Q So you are familiar, then, with the
23 federal prevention of significant deterioration
24 program, as you said?

1 A Yes, I am.

2 Q How are you familiar or how do you work
3 with that on a daily basis, if you will, with the
4 federal PSD program at the agency?

5 A The primary reference for these programs
6 is the regulations that USEPA adopts.

7 As part of those rule makings, we also
8 look at proposals of rules, the preambles of
9 adoption.

10 We also look at guidance provided by USEPA
11 and manuals provided by USEPA. Periodically we
12 attend workshops or seminars handled by USEPA. We
13 also discuss specific projects with USEPA. USEPA
14 provides us with information on determinations they
15 have made for other states.

16 There is a wide variety of techniques that
17 we use to gain information on the status of those
18 programs and the rules themselves to a case-by-case
19 determination.

20 Q Are you also familiar with the Clean Air
21 Act federal nonattainment area resource review
22 program?

23 A Yes, I am familiar with the Clear Air Act
24 -- Federal Clean Air Act nonattainment area review

1 program for stationary sources.

2 That is a program which does require rule
3 making by a state to actually adopt state rules to
4 implement the federal program.

5 I have been involved on behalf of the
6 agency on various rule makings before the board
7 adopting Illinois' new source review program.

8 I've also been involved in discussions
9 with USEPA concerning their approval of the program
10 and in the actual implementation of that program as
11 applied to new projects.

12 Q If you don't mind going into a little
13 further detail on that last question, how does
14 USEPA play a role in implementing the new source
15 review program in conjunction with the state?

16 A Well, in terms of the nonattainment area
17 program, even though we have state rules it is
18 pursuant to a federal requirement under the Clean
19 Air Act to have a new source review program.

20 There are federal laws that also have
21 concern, and the USEPA is concerned that there be
22 consistency with national policy and national
23 implementation of those programs.

24 So after USEPA approves a state's rules,

1 they are still very concerned about the day-to-day
2 implementation of those rules.

3 As specific projects come up where some
4 interpretation is necessary we may, in fact,
5 consult with USEPA for guidance.

6 That isn't necessarily the first place
7 we'd look. Obviously we'd look at the rules
8 themselves, adopting material, existing guidance.

9 But, if an issue came up where we thought
10 it would be useful to get USEPA guidance on a
11 point, we would certainly consult with them and get
12 their opinion.

13 USEPA is also involved as major and
14 significant construction projects do undergo public
15 notice before a permit is issued, and USEPA is part
16 of that public notice period and has an opportunity
17 to review our proposed action and may, in fact,
18 have comments or suggestions as to how we should
19 be applying the new source review program.

20 Q Where are the state's rules for
21 nonattainment new source review found in the
22 board's regulations?

23 A The state's rules for new source review
24 are found in Part 2 of 3.

1 Q And, again, you had indicated that you
2 had been involved with the development or the
3 promulgation of those rules; is that correct?

4 A Well, I have been involved on behalf of
5 the agency as proponents of various rule packages
6 before the board.

7 Q You had indicated earlier you participated
8 and attended a number of seminars or training
9 programs relating to new source review both PSD as
10 well as nonattainment area.

11 Could you give us an idea of how many you
12 attend on an annual basis?

13 A Well, at this stage I don't attend that
14 many on an annual basis. It's more common than
15 I'd be giving the training programs for in-house
16 training.

17 When there are opportunities for training,
18 USEPA has a teleconference system. We would sit in
19 or try to get a tape and get a look at it at some
20 point.

21 Q So some of the training programs that you
22 would participate or conduct in this case would be
23 programs sponsored by other agencies or other
24 sponsors, if you will?

1 A Well, I do a lot of in-house training.
2 Part of being a regulatory agency is providing
3 guidance to the regulated public as well.

4 A A lot of our recent activity now has been
5 outreach on the Clean Air Act Permit Program and
6 assisting applicants in preparing applications and
7 fulfilling their obligations under that program.

8 Q Okay. By "in-house" who do you mean
9 primarily?

10 A By "in-house training" I mean primarily
11 the permit section, but there are also people in
12 the field operation section who do inspections who
13 also have to be familiar with development in the
14 new source review program and also have to be aware
15 of the Clean Air Act Permit Program as well.

16 Q How familiar are you with the Illinois
17 Title 5 program as approved by USEPA?

18 A I'm very familiar with it, I'd say. I was
19 involved -- was part of the task force in the
20 agency that worked on developing the agency's
21 proposed legislation.

22 I also worked on the task force that
23 worked on the agency's regulations at Part 270 for
24 the Title 5 program.

1 I was also involved perhaps in a more
2 managerial or oversight role in the form
3 preparation.

4 As I said, I've participated in a number
5 of workshops and training sessions for the
6 regulated public explaining our expectations with
7 respect to Illinois' Title 5 permit program.

8 Q Have you played a role in providing
9 workshops or presentations in-house as well for the
10 Title 5 program?

11 A Yes, I have.

12 Q Is it fair to say you have some
13 familiarity with the statutory source definition
14 for the PSD and nonattainment area new source
15 review program?

16 A Yes, I do have familiarity with those
17 definitions.

18 Q What can you generally tell us about what
19 those definitions provide?

20 A Well, it's always good to go back to the
21 definitions themselves because words do change
22 slightly from definition to definition.

23 But in general the definitions of
24 stationary source or the new source review program,

1 prevention of significant deterioration program,
2 established three criteria for what constitutes a
3 single source; and a single source is the collection
4 of pollutant activities that are located on a
5 single piece of property or adjacent or contiguous
6 piece of property that are under common control or
7 under the control of persons -- under common
8 control and finally that belong to the same
9 industrial group.

10 So there are three common criteria.
11 Generally location, proximity, supervision, control
12 and then a functional criteria.

13 Q In applying those definitions at the state
14 level, are there any other areas or sources that
15 the IEPA would look to to guide its determination
16 of what constitutes a source?

17 A In terms of applying those definitions, we
18 would look to whatever guidance we can obtain that
19 is relevant to the circumstance.

20 We'd certainly look at the material
21 accompanying the adoption of those regulations.
22 We'd look at guidance that has been prepared
23 historically if we had guidance.

24 The most authoritative compilation of

1 guidance from USEPA on the new source review
2 program is its 1990 new source review workshop
3 manual.

4 If an issue wasn't adequately stressed and
5 those documents, set of circumstances, didn't quite
6 fit, we then look at other case-by-case
7 determinations that were made and, if necessary,
8 consult directly with USEPA.

9 Q How familiar are you with the stationary
10 source definition applied or existing under the
11 stage (phonetic) Title 5 program?

12 A Well, I don't have as much familiarity
13 with that definition. That is a new program just
14 approved by USEPA in March of last year.

15 We are coming up on our one-year
16 anniversary. So I certainly don't have the length
17 of familiarity with it, but insofar as I was
18 involved in the development of that I am familiar
19 with it.

20 I have also tried to keep up to date with
21 various new policy, interpreting that, lawsuits
22 relevant to that definition.

23 That is a slightly more complex definition
24 because it includes both the definition of major

1 source as found in new source review and prevention
2 of significant deterioration program, and then
3 there is a different separate definition of
4 "source" that's being used for regulation of
5 hazard safety (phonetic).

6 I'm probably more familiar with the new
7 source review PSD definition than hazard safety
8 definition.

9 Q As to the new source review programs both
10 nonattainment area and PSD, how do the definitions
11 of those generally compare with that of Title 5?

12 A Other than the definition of "source" for
13 hazard stafaluden (phonetic), I believe that the
14 definition of major stationary source under the
15 prevention of significant deterioration program and
16 under the new source review nonattainment area
17 program are similar to the Title 5 definition of
18 major six (phonetic).

19 Q Have you been involved with previous IEPA
20 determinations of source issues for permits under
21 both PSD and nonattainment area? I believe you've
22 indicated you have, correct?

23 A Yes, I have been. During the course of
24 review of permit applications involving new source

1 review or prevention of significant deterioration,
2 we occasionally run across situations where the
3 various entities involved in a project don't
4 necessarily clearly meet the definition of
5 "source."

6 In those circumstances it's necessary to
7 further evaluate whether the entities that are
8 involved in the project are properly considered one
9 source or properly considered separate sources.

10 In some circumstances we're looking at an
11 application where a person contends that they have
12 two separate entities which should be separate
13 sources.

14 We want to make sure that they are
15 properly kept apart, properly evaluated as other
16 sources.

17 In other cases people may be trying to
18 lump two entities together and may be looking at it
19 from the other perspective and asking whether it
20 may be more correct to look at those as separate
21 sources for the purposes of prevention of
22 significant deterioration or new source review.

23 Q When assessing the criteria relating to
24 major industrial groupings as a source definition,

1 what would or what does IEPA generally look at?

2 A Our approach to that criteria is to try to
3 first identify principal activity at a source, look
4 at what is its major product, what is its major
5 function.

6 And once we've reached that determination
7 of what is the primary activity then to see
8 whether, in fact, other activities at that source
9 are properly considered support activity so that
10 they should really be assumed or subsumed into that
11 principal activity or whether there are other
12 activities at the source that, in fact, might be
13 considered other stand alone principal activities.

14 We have to examine it further to see
15 whether, in fact, even though there are other
16 principal activities they might still have the same
17 major industrial grouping, still have to be
18 considered together.

19 Q If a company purports to have activities
20 in the same two-digit SIC code or, in other words,
21 the same major group, how will the agency apply the
22 criteria? Do you understand the question?

23 A Well, the relevant definition that we're
24 working with talks about a common industrial

1 grouping, a major industrial grouping, a single
2 industrial grouping.

3 The categorization scheme that USEPA has
4 adopted for this purpose is the standard industrial
5 classification code manual. They've borrowed
6 that. That is an existing classification system
7 that is used for other purposes.

8 And what they have said on using that
9 classification system is if entities have the same
10 two-digit classification code they are considered
11 to be along the same major industrial grouping.

12 If we end up with entities that have the
13 same two-digit major grouping, we'd conclude they
14 are the same major industrial activity. We would
15 not find any basis to distinguish them as having
16 different industrial groupings.

17 Q If a company purports to have activities
18 that belong to different SIC codes, what then would
19 the agency look at or consider?

20 A What we would be looking at if they allege
21 they have, in fact, two different two-digit SIC
22 codes for the various entities, is to see whether,
23 in fact, those activities are, in fact, related in
24 some way where one of those entities or some of

1 those entities might be considered support
2 facilities for the other entity.

3 So that one would be the principal
4 activity, and the other support facilities would be
5 as supporting facilities supporting that principal
6 activity.

7 That's a circumstance that occasionally
8 arises. Most of the examples we have dealt more
9 with the Title 5 situations than they have for
10 new source review and prevention of significant
11 deterioration.

12 But we have been going through things like
13 cement plants where a cement plant manufactures
14 cement. They also have a quarry that may be
15 associated with it producing raw materials.

16 In fact, if it was a stand alone quarry,
17 it would have a different two-digit SIC code for
18 the cement plant. Cement plants are under mineral
19 products SIC codes. Quarry are under, I guess,
20 crushed rock. That's two different SIC codes.

21 However, in a circumstance where the
22 quarry is supplying feed material to a cement plant
23 where the quarry is considered a support facility,
24 we would not consider it to be a separate source.

1 Q And in that example that would be the
2 case even if the activities, as you indicated, had
3 different SIC codes or purported to have different
4 SIC codes?

5 A That's correct. This issue of
6 classification of an SIC code -- purported SIC
7 codes, I'm looking at it in terms of classification
8 for environmental purposes in terms of assigning an
9 SIC code to implement either Title 5 or PSD or new
10 source review. There may be, in fact, other SIC
11 codes that have been assigned for other purposes.

12 As I said, USEPA borrowed an existing
13 classification code system that was already
14 established for other purposes for defining what
15 is a stationary source.

16 Q Where is the support facility notion
17 generally derived from to your knowledge?

18 A The concept of support facility was
19 originally identified when the USEPA revised its
20 prevention of significant deterioration rules
21 following the Alabama Power court decision back in
22 1980, and it's discussed in the preamble to the
23 final revised PSD rules at that period of time.
24 It's also reflected in the USEPA's new source

1 review workshop manual.

2 As I said, that is a good compilation of
3 historic interpretations and decisions that have
4 been made. That was issued in 1990, and that
5 reflects the preamble of the PSD rules.

6 Q Switching gears a little bit, when
7 assessing the criteria for the source definition
8 for location or adjacency and contiguous, what will
9 the IEPA generally look at under circumstances?

10 A Well, again, we'd be looking at a
11 circumstance where it wasn't immediately apparent
12 whether facilities were properly being separated or
13 properly being added together.

14 We want to make sure that they are being
15 handled properly in terms of being a single source
16 or multiple source.

17 Obviously, we think that the contiguous
18 definition is a fairly straightforward term.
19 Contiguous generally means touching in some
20 manner.

21 So we would look to see whether, in fact,
22 there is a physical connection between the
23 properties.

24 The adjacent one is a little bit more

1 general. But, again, we'd look at how close
2 together are the facilities, the different
3 entities; what is the interrelationship between
4 the entities; do they work as a single
5 manufacturing establishment or do they, in fact,
6 operate independently; and then we'd also look at
7 whether there are, in fact, other types of physical
8 connections between the various establishments.

9 Q So it is possible that activities could be
10 located at a different site or parcel of property
11 and yet still be considered the same source?

12 MR. O'BRIEN: I'm going to have to object to
13 the form of that question for two reasons.

14 One, it's asking for a legal conclusion.
15 But, secondly and more importantly, it's asking for
16 testimony on what is really the ultimate issue in
17 this case; and I think it's inappropriate to have
18 testimony on that when it's really an issue of law
19 to be decided by the board.

20 HEARING OFFICER EDVENSON: Mr. Layman?

21 MR. LAYMAN: I can rephrase.

22 HEARING OFFICER EDVENSON: Objection
23 sustained.

24

1 BY MR. LAYMAN:

2 Q Has the agency considered in reviewing
3 past new source review permit applications
4 activities to be of the same source even though
5 they may be separated by some distance?

6 A Yes, we have. We routinely have
7 considered establishments which have various
8 components that are separated by roads, rail lines,
9 other types of entities to be part of a single
10 source for purposes of new source review. Oh,
11 well, for purposes of PSD.

12 There are many facilities which are
13 separated by things like public streets and rail
14 lines, but there are also examples where sources
15 have different components that are separated by
16 more substantial distances.

17 HEARING OFFICER EDVENSON: And by PSD you mean
18 prevention of significant deterioration?

19 THE WITNESS: Yes, I do.

20 HEARING OFFICER EDVENSON: Thank you.

21 BY MR. LAYMAN:

22 Q What purposes under the new source review
23 programs are served by aggregating similar sources
24 that may be closely located?

1 A Well, the new source review programs,
2 both the prevention of significant deterioration
3 and the nonattainment area new source review
4 program, are attempting to evaluate whether a
5 proposed construction activity will have a major
6 impact on air quality, certainly have a major
7 change in the increase in emission.

8 If a proposed construction project will
9 have a major increased emission, these programs
10 trigger additional requirements.

11 They require trigger requirements for
12 lowest achievement emission rate or best available
13 control (phonetic) technology, a case-by-case
14 determination of appropriate control levels.

15 They will also trigger requirements to
16 address the impact in air quality.

17 Under prevention of significant
18 deterioration of the trigger and analysis
19 requirement to confirm that the proposed project
20 would not cause or contribute to an air quality
21 violation, and a nonattainment area would trigger
22 a requirement for offsets to address the impact of
23 the increased emissions.

24 The principle that USEPA established when

1 they were responding to the Alabama Power decision
2 was that it is appropriate to use the grouping
3 definition of "source" that fairly evaluates
4 whether proposed construction activity will, in
5 fact, have a major impact on air quality; and that
6 has two concerns.

7 First of all, it would not be appropriate
8 to allow a company to fragment their activities
9 in a certain area into a number of much smaller
10 entities that individually would escape review
11 nevertheless having in total from all those
12 activities a significant increase in emissions
13 and potentially a significant impact on air
14 quality.

15 On the other hand, if a company is making
16 compensating changes, if they are having increases
17 at one point and decreases at another point,
18 likewise, it's not appropriate to trigger the
19 points which are having significant increases in
20 emissions as having a major impact on air quality
21 if, in fact, there are other compensating decreases
22 elsewhere at the source.

23 So it gets back to the principle of how
24 you establish an appropriate definition of "source"

1 that will assure that potentially significant
2 changes in emissions that could affect air quality
3 will undergo appropriate scrutiny under PSD or
4 nonattainment area review.

5 Q Are you aware of any examples in the new
6 source review context by the PSD or nonattainment
7 area where the agency, the IEPA, has considered
8 separate locations or buildings to be one source
9 despite being separated by some distance?

10 A Well, the example I'm most aware of that's
11 the most significant separation in distance is
12 permits that were issued to Acme Steel.

13 Acme Steel operates a blast furnace and
14 coke oven operations in the City of Chicago. Those
15 operations are involved in making iron. That iron
16 subsequently has to be refined and converted into
17 steel.

18 Acme's steel-making operations are, in
19 fact, located in Riverdale, Illinois in a different
20 community.

21 The two locations, I believe, are
22 approximately ten miles apart; however, we looked
23 at those two entities and concluded that those two
24 should be treated as a single source for new source

1 review purposes.

2 Under normal circumstances most plants
3 operate as integrated steel mills where there will
4 be both coke oven facilities, blast furnace
5 facilities and steel-making facilities located
6 either on a single piece of property or on
7 properties that are in much closer proximity.

8 In this circumstance, whatever the reason,
9 the history of these particular companies these
10 operations were separated a much greater distance;
11 but we concluded that it would be appropriate,
12 nevertheless, to consider them as a single source.

13 Q In Acme Steel's case were those facilities
14 operating as one or independently with each other?

15 A In Acme Steel's case the two facilities,
16 the two entities, certainly operated in an
17 integrated fashion.

18 There was, in fact, an oxygen pipeline
19 that connected them. That's significantly minor, I
20 believe.

21 What's more important is that they had
22 to transport the hot iron from the Chicago facility
23 to the Riverdale facility for further processing.

24 They had to make sure that they had the

1 capacity to handle that hot iron in Riverdale, or
2 they had a potential for the iron cooling and no
3 longer being suitable for being processed.

4 Likewise, they had to make sure there was
5 enough hot iron coming from Chicago to make sure of
6 utilization of the Riverdale facility.

7 Their concerns about quality of steel,
8 quality of metal, that would relate the two
9 facilities also.

10 Q The final manufacturing process in Acme
11 Steel's case it was completed at the Riverdale
12 facility?

13 A That's correct. There is not much market
14 for the intermediate product of hot iron because it
15 would have to be further refined.

16 Their goals, in fact, were to convert the
17 metal to steel and then to roll that steel into
18 product for sale.

19 Q Are there any other examples that come to
20 mind where in a PSD context the agency has again
21 treated separate buildings or facilities as one
22 despite being separated by some distance?

23 A Another example that comes to mind that I
24 was involved in was Lone Star Cement. Lone Star

1 Cement operates a quarry that is a little bit less
2 than a mile away from the actual cement
3 manufacturing facility.

4 We have considered that quarry to be part
5 of the cement manufacturing facility even though
6 they are that distance apart.

7 There is, in fact, a conveyor belt that
8 transports the crushed stone from the quarry to the
9 cement plant for further processing.

10 Q Is the relationship between the production
11 areas or activities at the Lone Star source similar
12 in respect to that of Acme Steel?

13 A They are certainly similar in as the one
14 entity produces an intermediate product or raw
15 material for the other.

16 I think in the case of the steel mill
17 there is much more concern about close coordinated
18 management of the two facilities given the need to
19 transport hot metal. It's a lot easier to store
20 rock and stockpile it for whenever it is needed.

21 Q When did you personally first become aware
22 of Color Communications' facilities in Chicago?

23 A The first time that I recall becoming
24 aware of them was in January of 1994.

1 Q And how did you become aware of them in
2 that context?

3 A Mr. Nicholas submitted a proposed
4 permitting protocol to the agency to deal with
5 permitting of the Color Communications' facilities
6 in Chicago.

7 That was assigned to me to look at. I
8 reviewed it and sent comments under Mr. Sutton's
9 signature -- that's Don Sutton, the manager of the
10 permit section -- indicating that there were some
11 serious concerns to be resolved about the proposed
12 permitting strategy. As a result of that there was
13 a subsequent meeting with Color Communications
14 later that year.

15 Q What can you tell us that you recall
16 about the agency's permitting history of Color
17 Communications at that point in time?

18 A Well, the concern that we had at that
19 point in time was that Color Communications had
20 let the permit for the one facility lapse, it had
21 expired without renewal. That was the 4242
22 facility.

23 And then the 4000 West Filmore Street, the
24 much smaller facility, in fact, did not have a

1 state operating permit.

2 So we were faced with a facility that
3 didn't have a permit under the state permit program
4 as well as an entity or building that had let its
5 historic permit lapse.

6 There had also been some construction
7 activity without getting the necessary construction
8 permit, so we had a concern about remedying the
9 current status of the various buildings and units
10 under the current state permitting program which
11 had to be resolved really before we prepared to
12 move into the Title 5 permitting program which at
13 that point hadn't even been approved by USEPA.

14 Q Do you recall in the early review of the
15 permitting protocol there being a discussion as to
16 the existence of a third facility perhaps prior to
17 that point in time?

18 A I don't know if that was discussed or
19 focused in on very heavily during the initial
20 review of the permit applications.

21 That point certainly became significant
22 later on in the review of the permit applications
23 in, I guess, the spring of 1995.

24 As I said, we had a number of different

1 permitting issues to deal with.

2 We had a facility that was in operation,
3 didn't have a permit; so we had to issue an
4 operating permit for that existing facility.

5 We also had some equipment that had been
6 built without getting the necessary construction
7 permit.

8 In the absence of a construction permit
9 that piece of equipment -- it was a new coating
10 line -- didn't have any restrictions on the manner
11 in which it would operate and, in fact, had in the
12 absence of such restrictions the potential to emit
13 more than 25 tons of volatile organic material and
14 would be considered a major source.

15 And then there were some minor pieces of
16 equipment that were subsequently proposed to be
17 added to the 4000 West Filmore Street facility.

18 So we had to conduct an evaluation of
19 whether, in fact, a major increase in emissions
20 had occurred or would occur as a result of that
21 construction activity.

22 As part of making that determination it
23 became important for us to evaluate what was, in
24 fact, the source we should be dealing with; and

1 initially we were concerned that it appeared that a
2 facility had been built at 4000 West Filmore, a new
3 facility, which even though not a major source by
4 itself had certain emissions that contributed to
5 the overall increases in emissions by Color
6 Communications.

7 At some point in time somebody who was
8 reviewing the previous documentation became aware
9 that that 4000 West Filmore Street facility was,
10 in fact, the recipient of operations that had
11 previously been conducted by Color Communications
12 at a building on Kildare Street which was also in
13 the same general proximity to Color
14 Communications.

15 At that point we concluded that it would
16 be appropriate to not consider the West Filmore
17 Street facility to be new construction but rather
18 relocation of those existing operations, and we
19 simply focused in on the new equipment being
20 introduced into the area rather than the relocation
21 of equipment from South Kildare to West Filmore.

22 Q Do you recall the specific address of the
23 South Kildare facility?

24 A I believe that that address was recorded

1 as 917 South Kildare Street.

2 Q Could you identify on the Respondent's
3 Exhibit No. 2 the general locality of where you may
4 have placed or you did place that facility to be in
5 relation to the 4242 facility?

6 A Yes, I can. I am looking at Exhibit 2 --
7 Respondent's Exhibit 2 and looking at Filmore
8 Street and the 4200 block.

9 Kildare is a north-south street that is to
10 the west of that block, and using the street number
11 identifications on that map the 917 South Kildare
12 Street was within a couple of blocks of the 4242
13 West Filmore Street location.

14 And the South Kildare facility certainly
15 seemed to be in the same range, if not closer, than
16 the 4000 West Filmore Street to the 4242 West
17 Filmore Street building.

18 Q How would the agency have looked at or how
19 would the agency have considered operations at the
20 917 South Kildare facility to be in relation to the
21 4242 facility?

22 MR. O'BRIEN: I'm going to object to the form
23 of that question because, frankly, I just really
24 don't understand the relation question.

1 I think the question is how did they
2 relate from one facility to the other facility;
3 and, you know, maybe my objection is just asking
4 for a clarification of the question.

5 MR. LAYMAN: The question, I think, is in the
6 nature of how both facilities would have been
7 treated for source determination purposes.

8 MR. O'BRIEN: Well, then I guess maybe the
9 other objection would be a foundation objection as
10 to how this witness would know how that would have
11 been treated.

12 HEARING OFFICER EDVENSON: Is it a
13 hypothetical?

14 MR. LAYMAN: In this context it's a
15 hypothetical, absolutely. It's purely a
16 hypothetical since the agency did not have at that
17 time an opportunity to make a determination.

18 HEARING OFFICER EDVENSON: I'm going to sustain
19 the objection.

20 BY MR. LAYMAN:

21 Q How did the agency process the permit
22 application submitted for the first time for the
23 newer 4000 West Filmore Street facility?

24 A My recollection is that we issued that

1 permit, we issued an operating permit for an
2 operating facility.

3 Q When Color Communications came in with a
4 permit application for an operating permit for the
5 4000 facility, how did the agency treat that
6 submittal?

7 A I don't recall.

8 Q Do you recall whether or not the agency
9 had previously permitted the operations at the 917
10 South Kildare facility?

11 A No, I don't. My recollection is more
12 specific to the circumstances involving the
13 additional construction activity at the 4000 West
14 Kildare Street. I mean 4000 West Filmore Street.

15 Q Okay.

16 A That's where the issue of new source
17 review became involved because we had a proposed
18 construction activity.

19 At that point it was necessary to evaluate
20 what were the contemporaneous increases and
21 decreases that would be occurring at Color
22 Communications.

23 At that point in time we believe that, in
24 fact, those two buildings should be considered part

1 of a single source.

2 We had an increase in emissions from the
3 construction of a new line at the 4242 West Filmore
4 Street. That line was constructed after November
5 of '92.

6 But at that point Color Communications
7 had, in fact, installed an afterburner on that line
8 and had accepted limitations restricting its
9 emissions to something on the order of 24 tons
10 per year.

11 Color Communications was requesting a
12 permit to add an additional laminating machine or
13 mounting machine at the 4000 West Kildare Street
14 location. That had emissions about four-tenths of
15 a ton.

16 We looked at the combination of 24 tons
17 and four-tenths of a ton; came up with a
18 contemporaneous increase of 24.4 tons which was
19 less than 25 tons, not a major modification.

20 So we issued a construction permit -- a
21 joint construction operating permit, I believe --
22 to allow them to go ahead and install and operate
23 the proposed new machine at 4000 West Kildare
24 Street.

1 In conjunction with that activity we also
2 sent a letter to Color Communications notifying
3 them that we had looked at various information they
4 provided in their permit application considering
5 whether the two buildings should be considered
6 separate sources or not.

7 And then after a detailed review we were
8 not convinced, that we believed it was appropriate
9 to consider the two buildings as a single source
10 for purposes of new source review and to alert
11 them that under the Title 5 context we would be
12 expecting those two buildings to be considered
13 and treated as a single source.

14 Q I will show you now from Respondent's
15 Exhibit 1 Pages 9A and 9B, a letter dated May 9,
16 1995, from the agency to Mr. Steve Winter. Is that
17 the letter you were referring to in your last
18 answer?

19 A Yes, it is. This is the letter that we
20 sent out about the same time that we issued the
21 construction permit for the new machine at 4000
22 West Filmore.

23 HEARING OFFICER EDVENSON: What page of the
24 record are we on, Mr. Layman?

1 MR. LAYMAN: 9A and 9B.

2 HEARING OFFICER EDVENSON: Okay. Thank you.

3 BY MR. LAYMAN:

4 Q Mr. Romaine, in receiving a permit
5 application submittal from Color Communications
6 for operations at its 4000 West Filmore Street
7 facility, did the agency consolidate all of the
8 operations activity at that source into the permit
9 for the 4242 facility?

10 A Are you referring back to the activity in
11 the spring of 1995 --

12 Q Yes, I am.

13 A -- that we discussed?

14 No, we did not. We were still operating
15 under the state permit program, and we allowed the
16 permit to continue as a permit on its own under a
17 separate ID number distinct from the ID number for
18 the 4242 West Filmore Street building.

19 Q What is the agency's purpose in assigning
20 permit ID numbers?

21 A Permit ID numbers were created for the
22 initial operation of the permit program when it
23 was established in 1973.

24 Under the state permitting program,

1 which applies to both new equipment and existing
2 equipment, a person can apply for a permit for
3 individual pieces of equipment or individual
4 emission units if they so desire.

5 There are companies that the state program
6 had many permits at a single location. The record
7 that we always talk about is A. East Dally
8 (phonetic) in Decatur; that, in fact, their
9 manufacturing establishments had over 250
10 individual permits.

11 We used identification numbers as a means
12 to identify a single location for a number of
13 different permits.

14 At that point in time it was useful for
15 the purposes of just alerting our field staff that,
16 in fact, when they visited that particular site
17 they should be aware of all these different permits
18 and grouping all those permits together in our
19 filing system.

20 Since that time ID numbers have taken on
21 additional roles. They are used for the fee
22 program at this point in time.

23 Under the fee program for air pollution
24 sources and sources required to pay a fee per site,

1 we have allowed the identification number to stand
2 as the distinct identifier for payment of fee so
3 that we expect each entity with a distinct ID
4 number to be paying its own separate permit fee.

5 We have carried the ID number concept
6 on Title 5 in terms of identifying particular
7 sources.

8 That could be important in terms of
9 distinguishing Title 5 permits from construction
10 permits that might apply to that same location.

11 However, the assignment of identification
12 number does not indicate a determination under
13 Title 5 or, in fact, under new source review or PSD
14 whether those separate entities would be considered
15 one source for those purposes or not. There are
16 other purposes for which the identification number
17 system was established.

18 Q During the initial review of the permit
19 applications as they came in in 1994 for Color
20 Communications, what became known to the agency
21 about the nature of the relationship between the
22 existing Color Communications' facilities at the
23 4242 West Filmore Street facility and the 4000 West
24 Filmore Street facility?

1 A The information in the application that
2 we saw it suggested that there was a definite
3 relationship between those two facilities.

4 It suggested to us that there was, in
5 fact, a support facility relationship; that the
6 4242 facility produced an intermediate product that
7 was subsequently finished in the 4000 West Filmore
8 Street building.

9 Because of that apparent relationship
10 we requested further information from Color
11 Communications explaining how those two facilities
12 related.

13 We asked questions about how much material
14 was transferred from one building to the other
15 building, how much material came in from outside.

16 As a result of those inquiries we were
17 not able to come up with any information that
18 demonstrated to us that there was not, in fact, a
19 support facility relationship between those two
20 structures.

21 We concluded after that detailed review
22 and formally communicated to Color Communications
23 in May of 1995 we found that they were, in fact,
24 appropriately considered one source based on a

1 single industrial grouping.

2 Q Was the nature of the business
3 relationship at Color Communications, then, similar
4 to the manufacturing operations at other facilities
5 where the agency has treated such facilities as one
6 source, Acme Steel being one example?

7 MR. RUBIN: May I have the question read back,
8 please?

9 MR. LAYMAN: I beg your pardon?

10 MR. RUBIN: May I have the question read back?

11 HEARING OFFICER EDVENSON: Can we have the
12 question read back, please?

13 (Whereupon, the record was read
14 by the reporter as requested.)

15 THE WITNESS: In terms of a functional
16 relationship it is certainly similar in general
17 terms to Acme Steel and other facilities where
18 there are a series of steps involved from taking
19 the initial raw materials to making a final product
20 for sale.

21 It is not as straightforward, I would say,
22 as Acme Steel because there are other materials
23 that are being introduced at the 4000 West Filmore
24 Street in terms of bringing in paper that these

1 color chips are assembled on top of; but it still
2 does represent an integrated manufacturing
3 process.

4 BY MR. LAYMAN:

5 Q Would the same be true in comparison with
6 the other example you referenced in your testimony,
7 that of Lone Star?

8 A Yes, it would. It would probably be more
9 similar to Lone Star. In the manufacture of cement
10 there are some other additives that are introduced
11 into cement that are not present in the stone
12 brought over from the quarry.

13 Q Are you aware of any other color-board
14 manufacturers in the State of Illinois?

15 A No, I am not.

16 Q Are you familiar with other business
17 operations in Illinois that perform both coating
18 and printing functions?

19 A Yes, I am. There are a number of
20 packaging companies in Illinois which involve both
21 coating and printing operations, and sometimes they
22 coat to produce the packaging material and then
23 subsequently print on top of that packaging
24 material.

1 So they are starting from rolls of foil
2 or plastic and are then shipping out rolls of
3 packaging material for snack products like a Frito
4 Lay bag for potato chips.

5 They may also slightly reverse the order
6 where they do their printing first and then put a
7 protective coating on top of the packaging to
8 protect the printing from deterioration or
9 abrasion.

10 Q In your experience are you aware of
11 whether these facilities commonly conduct their
12 operations at the same place of business?

13 A The examples that I'm aware of operate
14 under a single premises, yes.

15 Q During the review, again, of the various
16 permit applications in 1994 of Color
17 Communications' facilities, what did the agency
18 learn about the location of Color Communications'
19 facilities?

20 A Well, in terms of the location we learned
21 that the locations of the two buildings were very
22 close together.

23 They were not contiguous of a common
24 definition; but they were certainly in the general

1 vicinity, only a block apart, meaning a common
2 sense definition of adjacent.

3 Q Do you believe the agency's approach in
4 that context to be consistent with other cases
5 involving facilities that acted in the same type
6 of relationship?

7 A We have not made that many determinations.
8 As I said, the Title 5 program is a new program.
9 I'd say that to the extent those issues have come
10 up in new source review and PSD it's consistent.

11 A common sense approach says that looking
12 at facilities within a couple of blocks certainly
13 meets the concept of being in close proximity to
14 each other particularly if there is a functional
15 interrelationship between those entities.

16 Q In assessing the issue of source
17 determination did the agency in Color
18 Communications' case seek guidance from USEPA?

19 A Yes, we did seek guidance from USEPA.

20 The issue of adjacency is not directly
21 addressed by USEPA's new source review workshop
22 manual.

23 We knew that there were potential
24 enforcement issues out there, so we also did

1 consult with USEPA to get their opinion on whether
2 these facilities should be considered as qualifying
3 as adjacent or, in fact, whether USEPA in some
4 previous circumstance had found similar buildings
5 to actually constitute separate sources.

6 USEPA did not identify circumstances where
7 buildings this close together had ever been
8 considered separate sources.

9 Q What kind of guidance did the agency
10 receive in response from USEPA?

11 A We received written guidance from USEPA.

12 Q And what was the general gist of that
13 written guidance?

14 A The written guidance addressed the
15 relevant criteria of the source definition and
16 indicated it did not appear that common control
17 or ownership was under question.

18 So it addressed the idea of or the
19 criterion of common industrial grouping indicating
20 it was believed the two facilities would qualify as
21 a single activity and it's a support facility
22 versus primary activity; and it also indicated that
23 in terms of the issue of proximity and location
24 USEPA believed that those facilities should be

1 considered to be adjacent facilities, that the two
2 buildings should be considered to be adjacent
3 buildings.

4 Q In subsequently issuing state permits to
5 Color Communications how did the agency then treat
6 Color Communications' facilities for purposes of
7 the new source review?

8 A As I said before, when looking at the
9 construction activity at 4000 West Filmore Street
10 facility, we looked at that construction activity
11 in conjunction with contemporaneous construction
12 activity at the 4242 West Filmore and looked at
13 those two buildings as a single source.

14 Q When Color Communications submitted its
15 CAAPP applications most recently, what did the
16 agency learn of how Color Communications wanted
17 to treat its facilities in terms of source?

18 A Color Communications submitted two
19 separate CAAPP applications, submitted one for the
20 4000 West Filmore Street facility and another CAAPP
21 application for the 4242 West Filmore Street
22 facility. That was identified as part of the
23 agency's completeness review of those
24 applications.

1 Given our historical review of those, the
2 source issue for those facilities within the last
3 year and a half, within the last year we were aware
4 that was inconsistent with our determination, and
5 we communicated that inconsistency to Color
6 Communications.

7 Q I will show you Respondent's Exhibit 1
8 identified by Bates No. 286 in the record as well
9 as Page 287. It's a letter dated November 2, 1995,
10 again to the attention of Mr. Steve Winter. Is
11 that the letter that you were referring to in your
12 last answer?

13 A Yes, it is.

14 Q Would you say in summing things up that
15 the source determination made for purposes of the
16 CAAPP program was consistent with the agency's
17 earlier permitting decisions for new source review?

18 A Yes, it certainly was. Our determination
19 for the CAAPP program, in fact, reflected the
20 determination previously made for permitting Color
21 Communications under the new source review
22 program.

23 MR. LAYMAN: We have nothing further at this
24 point.

1 HEARING OFFICER EDVENSON: All right. I think
2 for the benefit of the witness we will take a
3 five-minute recess before cross examination.

4 (Recess taken.)

5 HEARING OFFICER EDVENSON: Let's proceed then
6 with the cross examination of Mr. Romaine.

7 CROSS EXAMINATION

8 BY MR. O'BRIEN:

9 Q Mr. Romaine, I'd like to ask you some
10 questions first about some of the other facilities
11 you discussed with Mr. Layman in your direct
12 examination this afternoon, and the first one would
13 be the Acme Steel plant. You are familiar with
14 that plant, you testified?

15 A Yes, I did.

16 Q I believe you testified that there is a
17 rail line running between the Chicago and Riverdale
18 plants of the Acme Steel Company; is that correct?

19 A There are rail lines running between two
20 facilities, that is correct. I'm not sure if there
21 is one rail line or a number of different rail
22 connections between the two plants.

23 Q And it's also, I think, my understanding
24 that some of the material from the Chicago plant is

1 transported via rail line to the Riverdale facility;
2 is that correct?

3 A That is correct.

4 Q Do you know who owns the rail line or rail
5 lines that connect the Chicago and Riverdale
6 facilities for Acme Steel?

7 A No, I do not.

8 Q Do you know who operates those rail lines?

9 A No, I do not.

10 Q Do you know if Acme Steel itself owns any
11 part of those rail lines?

12 A No, I do not.

13 Q Now, you also testified, I believe, that
14 the material going from the Chicago plant to the
15 Riverdale plant in Acme's case was hot iron. Is
16 that a fair description of it?

17 A Yes, it is.

18 Q Does all the hot iron that is produced
19 at the Acme Steel plant in Chicago then get
20 transferred to the Riverdale plant for additional
21 processing?

22 A That is my understanding except for any
23 small amount of scrap metal that gets reprocessed
24 at the Chicago facility.

1 Q Except for scrap metal that gets
2 reprocessed at Chicago?

3 A That's correct.

4 Q What would the circumstances of that be,
5 do you know?

6 A What I was thinking about is just residual
7 amounts of metal left in the tapping troths or
8 removed from a slagging operation that has cooled,
9 solidified but then gets reintroduced or discharged
10 to the process.

11 Q So this would be material that was for
12 some reason taken out of the process at Chicago and
13 either thrown away or reintroduced to the process?

14 A That's my understanding.

15 Q Now, I believe you also mentioned an
16 oxygen pipe connected to the Chicago and Riverdale
17 facilities of Acme Steel. Do I have that right?

18 A Yes, you do.

19 Q What's the purpose of that oxygen pipe, if
20 you know?

21 A The purpose of that oxygen pipe is to
22 transfer oxygen from one of the sites where the
23 oxygen is separated from the air at least to
24 transfer some of that oxygen to the other facility

1 where there is a need for oxygen.

2 Q Do you know who owns the oxygen pipe that
3 connects those two facilities?

4 A I believe it is owned by Acme.

5 Q Now, you testified that the agency made a
6 determination that the Riverdale and Chicago plants
7 of Acme Steel were treated as one source; is that
8 correct?

9 A Yes.

10 Q Did Acme Steel request that those two
11 plants be treated as one source?

12 A Yes, they did.

13 Q I'd like to ask you a couple questions now
14 about the Lone Star facility that you identified in
15 discussions with Mr. Layman. You're familiar with
16 that facility, I take it?

17 A Yes, I am.

18 Q Now, as I understand that facility, there
19 is a quarry and materials from the quarry are
20 transferred to a cement plant. Do I have that
21 right?

22 A Yes.

23 Q Do any materials from the quarry get
24 transferred to designations other than to Lone Star

1 Cement plant?

2 A I'm not aware that they are.

3 Q Now, I believe you testified with regard
4 to Lone Star that there is a conveyor belt that
5 connects the quarry to the cement plant. Do I have
6 that right?

7 A Yes.

8 Q And I also think I understand that the
9 conveyor belt is used to transfer materials, rocks
10 and such, out of the quarry to the cement plant; is
11 that correct?

12 A That's correct.

13 Q Do you know who owns the conveyor belt
14 that connects the quarry to the cement plant?

15 A I believe that would be owned by Lone Star
16 Cement.

17 Q Do you know if Lone Star has an easement
18 or some rights over the property on which the
19 conveyor belt runs between the two facilities?

20 A I don't know that for a fact, but I would
21 assume that to be the case.

22 Q The property or the interval over which
23 this conveyor belt runs do you know if this
24 property is developed, if it has other buildings

1 or activities on it?

2 A I don't recall.

3 Q Now, in Lone Star's case, again, you
4 indicated that the agency has determined that the
5 cement plant and the quarry are treated as a single
6 source, correct?

7 A Yes.

8 Q Did Lone Star request that its quarry and
9 cement plant be treated as a single source?

10 A I don't recall.

11 Q Do you recall if Lone Star objected to the
12 agency's determination that the quarry and the
13 cement plant would be treated as a single source?

14 A I don't recall that either.

15 Q Going back to Acme for a minute, do you
16 know whether the Chicago plant and the Riverdale
17 plant would both qualify independently as major
18 stationary sources under the applicable
19 regulations?

20 A Yes, they would.

21 Q Now, I'd like to ask you a couple
22 questions about the idea of support facility which
23 I believe you testified to with Mr. Layman. Do you
24 have my frame of reference there?

1 A Yes.

2 Q You said and I believe in your testimony
3 that the concept of a support facility as you're
4 aware of it was derived from a preamble to some
5 regulations and from the 1990 NSR workshop manual.
6 Was that your testimony?

7 A Yes, it is.

8 Q Are you aware of any other sources for the
9 concept of support facility?

10 A I think the concept of support facility
11 has been also touched on in various case-by-case
12 determinations.

13 It came up in a facility operated by --
14 two entities operated by General Motors in Lansing,
15 Michigan. It came up in, I believe, a power plant
16 in Wisconsin. There are a number of specific
17 instances where that topic has been discussed.

18 Q Is the concept of support facility
19 included in the Illinois EPA -- I should not say
20 Illinois EPA.

21 Is the concept of support facility
22 included in the Illinois regulations Title 35?

23 MR. LAYMAN: Objection. I guess I'm not quite
24 sure whether what's being asked is a question of

1 law or exactly what.

2 MR. O'BRIEN: Maybe I can rephrase it.

3 MR. LAYMAN: Okay.

4 BY MR. O'BRIEN:

5 Q Do the Illinois regulations at Title 35
6 contain as regulations the reference to the support
7 facility that you described this afternoon in your
8 direct testimony?

9 A I don't believe that the term "support
10 facility" is specifically used; however, as those
11 regulations were intended to carry out the federal
12 programs, I would contend that they build on
13 federal guidance in which the term "support
14 facility" is used to carry out that particular
15 criterion in the definition of "source."

16 Q So, in other words, that you believe that
17 federal guidance drives the interpretation that the
18 agency makes of Illinois regulations?

19 MR. LAYMAN: Objection. Calls for a legal
20 conclusion.

21 MR. O'BRIEN: Well, I think it's as the agency
22 is applying it.

23 MR. LAYMAN: The question asked is whether the
24 federal law drives a state agency. I think that's

1 a question of law.

2 HEARING OFFICER EDVENSON: The question was
3 whether federal guidance drives the state
4 interpretation of state regulations, I believe.

5 MR. O'BRIEN: I think that's what I'm trying to
6 ask.

7 HEARING OFFICER EDVENSON: Mr. Romaine has been
8 testifying as to the basis for decisions that he
9 has made in permit decisions, and so I am going to
10 overrule the objection and request that Mr. Romaine
11 answer to the best of his ability.

12 THE WITNESS: I'm not sure what you mean by the
13 term "drive."

14 HEARING OFFICER EDVENSON: Would you want to
15 rephrase the question, Counsel?

16 MR. O'BRIEN: I'll try.

17 BY MR. O'BRIEN:

18 Q Does the federal guidance that you
19 referred to influence or help the agency make
20 determinations of how to interpret its own air
21 regulations?

22 A Yes, it does.

23 Q Do you know if the concept of support
24 facility that we've discussed is contained in any

1 of the federal regulations that have been adopted
2 under Part 70?

3 MS. SAWYER: Objection. I think that calls for
4 a legal conclusion also if you're asking him if the
5 concept is reflected in the regulations.

6 MR. O'BRIEN: Maybe I can ask it this way and
7 fix the objection.

8 BY MR. O'BRIEN:

9 Q Do you know if the definition of support
10 facility that you've been discussing this afternoon
11 is included in the federal regulations that have
12 been adopted under Part 70?

13 A The Federal Part 70 regulations which I
14 would base the Title 5 on do not include the
15 definition of support facility.

16 Q Now, I'd like to pose a hypothetical
17 question. It has to do with this concept of
18 support facility.

19 In the hypothetical question you'd have
20 two manufacturing buildings A and B. They are
21 under common ownership and control, and the output
22 of Building A 100 percent of that output is
23 transferred to Building B for additional processing
24 or manufacturing.

1 In that instance if Building A and
2 Building B were 50 miles apart, would the agency
3 consider those two facilities as one source under
4 the regulations?

5 A With that hypothetical example I don't
6 believe that the agency would consider those two
7 facilities to be a single source given the extent
8 of geographic separation between the two entities.

9 Q How about if you change it to 25 miles
10 apart?

11 A I think I would stick with the same
12 answer. One of the things that crops up in the
13 back of my mind is one of the examples in the
14 USEPA's preamble, the PSD regulations and the
15 terminology that talks about an example that was
16 posed to comments asking a question about a mine
17 and a power plant that were separated by 20 miles
18 and connected by a rail line.

19 So I have a line of demarcation that would
20 suggest that entities that are separated by more
21 than 20 miles that is such a distance that they
22 would be considered separate sources.

23 Q That brings up another question. Let's
24 say you had that situation you just referred to

1 where those facilities were 20 miles apart; and,
2 again, let's assume they are support facilities,
3 as I've indicated. 100 percent of the -- in my
4 hypothetical 100 percent of the output of one goes
5 to the other for more processing.

6 And what if they were 20 miles apart, but
7 there wasn't a rail line connecting them. There
8 wasn't any connection via conveyor belt or a rail
9 line or any other kind of connection.

10 In that instance what kind of
11 determination would the agency make?

12 A I think still going back to that
13 particular guidance USEPA has given us one
14 benchmark that says if things are separated by 20
15 miles they would not consider them to be in close
16 proximity, one would consider those entities to be
17 separate sources.

18 Q So, in other words, 20 miles would be --
19 in the way you're interpreting the agency or the
20 USEPA's example, 20 miles apart facilities could be
21 considered adjacent; is that correct?

22 A No. I'm saying exactly the opposite.
23 That USEPA has given us one piece of guidance in
24 the preamble that indicates that entities 20 miles

1 apart would not be considered part of a single
2 source; and so that I believe the agency in this
3 type of hypothetical example would turn to that
4 particular guidance and conclude that entities that
5 are 20 miles apart would be considered separate
6 sources.

7 Q I misunderstood that. I thought you said
8 that those were considered one source, and I
9 apologize. So I misunderstood you.

10 So just to make sure I have the record
11 clear, the USEPA's guidance suggests that
12 facilities located 20 miles apart and connected by
13 a rail line indicates that those facilities should
14 be treated as separate sources; is that correct?

15 A That was a hypothetical that was posed to
16 USEPA, and my recollection is that they said those
17 should be separate.

18 Q Can you tell us as you sit here in using
19 and going back to my hypothetical of two buildings
20 under common control, one providing all its
21 materials to the other for additional production,
22 at what point do they become close enough to be
23 considered a single source? Is there a line of
24 demarcation?

1 MR. LAYMAN: Objection. Calls for speculation,
2 and we will increasingly get into an area of
3 speculation as we try to narrow the mile marker
4 down from 20 miles to in this case and relevant
5 only to this case less than a mile.

6 MR. O'BRIEN: Well, I think it's relevant how
7 we've heard testimony from Mr. Romaine as to how
8 the regulations are applied by the agency; and I
9 think it's fair to inquire as to what the
10 application would be of a situation that is
11 somewhat different than the one that is presented
12 here.

13 MR. LAYMAN: Well, if anything, Mr. Romaine's
14 testimony would illustrate that these determinations
15 are made on a case-by-case basis and involve any
16 number of different factors.

17 MR. O'BRIEN: I understand that that's probably
18 -- that may be what Mr. Romaine's testimony would
19 be; but, if that is the case, let's let him testify
20 to it.

21 If he says there is no line of
22 demarcation, he can say that. If he knows where
23 there is one, he can say that.

24 We just would like to have something for

1 the record to indicate what the agency's position
2 is on this issue.

3 HEARING OFFICER EDVENSON: I'm going to sustain
4 the objection with respect to this particular
5 question; however, I am interested in exploring
6 with the witness further the basis for decisions on
7 this issue. I think the question was a little too
8 far from the facts in our present situation.

9 BY MR. O'BRIEN:

10 Q With that in mind, let me ask a somewhat
11 different hypothetical.

12 Let's assume we had a situation where,
13 again, we had two facilities A and B; and, again,
14 they are owned by the same company so they are
15 under common control.

16 And in this instance they are sitting on
17 properties that are contiguous to each other. They
18 share a common boundary. So they are right next
19 door.

20 In this hypothetical there is absolutely
21 no support relationship; that is, none of the
22 products or production from Facility A go to
23 Facility B or vice versa; and in this instance
24 these two facilities have a different SIC code.

1 Would the agency consider these two
2 facilities to constitute one source or separate
3 sources?

4 A Given the hypothetical circumstances that
5 were presented, we would consider those to be
6 separate sources for PSD and new source review
7 purposes and for the Title 5 definition of
8 "source." Based on those definitions they would
9 fail on having a common major industrial grouping.

10 Q So it would be your belief that in that
11 instance those facilities because they did not
12 support each other would not share a common major
13 industrial grouping; is that correct?

14 A No.

15 Q Okay. What is the basis for your
16 conclusion that in that instance those two
17 facilities would not share a major industrial
18 grouping?

19 A That was the hypothetical circumstance you
20 gave to me.

21 Q That's correct. What is -- I've asked
22 that badly. Let me go back.

23 If two facilities have no support
24 relationship to each other, is the analysis of

1 whether they are a single major industrial grouping
2 determined solely by virtue of their standard
3 industrial classifications?

4 A For this hypothetical example --

5 Q Sure.

6 A -- where criteria of common ownership is
7 satisfied and criteria for common proximity is
8 satisfied?

9 Q (Mr. O'Brien nodded head up and down.)

10 A I believe that would be the case. I'm
11 trying to think of an example where I've run across
12 it as you've described it.

13 The example that I go back to that type of
14 situation is Dow Chemical. Dow in Joliet they own
15 a very large piece of property.

16 On that piece of property they have a
17 chemical production facility in one area, another
18 corner they have a terminal that is involved in
19 distribution of materials, and finally they have a
20 plastic product production facility.

21 There is not -- between those plants they
22 operate essentially independently without
23 relationship; and as to new source review and PSD
24 we would, in fact, consider those to be separate

1 sources.

2 Q So in the instance of Dow Chemical -- I
3 want to make sure I have the facts straight on that
4 -- are those three facilities you mentioned a
5 chemical production facility, a plastic production
6 facility and a terminal, are they located on
7 contiguous or adjacent properties?

8 A Yes, they are.

9 Q And because there is no support
10 relationship among those three the agency treats
11 those as separate sources; is that correct?

12 A We would treat them as separate sources
13 for PSD and new source review purposes as related
14 to Title 5.

15 I qualify it because under the hazardous
16 air pollutant criteria definition of "source" it
17 would still be a single source.

18 Q And why would that be under the hazardous
19 air pollutant criteria?

20 A There is a different definition for
21 stationary source under hazardous air pollutant
22 which does not include common industrial activity.
23 That particular criteria was dropped out.

24 For that purpose under Title 5 there are

1 only two criteria, common ownership of control and
2 general proximity.

3 Q Thanks. That clears it up.

4 We talked a little bit about how the
5 agency interprets adjacent -- or maybe the way to
6 ask it is this.

7 How far apart must two facilities be to be
8 no longer adjacent as the agency interprets that
9 term?

10 MR. LAYMAN: Objection on the same ground that
11 we had previously objected for the reason that it
12 comes down again to a question of how far is far
13 enough and how close is close enough. It
14 inherently calls for speculation.

15 MR. O'BRIEN: It calls for -- in this case
16 what I'm asking for is it calls for the way the
17 agency is applying the regulations that are imposed
18 upon the manufacturer and community, and the idea
19 is to see how the agency exercises its discretion
20 or its interpretation of these regulations.

21 And I just wanted -- I think we discussed
22 earlier when we had an objection the idea of how
23 the agency treats other facilities.

24 The purpose of this question is to find

1 out how the agency treats facilities that are
2 separated by distances that are different than the
3 one we have in the instant case.

4 MR. LAYMAN: Is this a hypothetical; or is it,
5 in fact, designed to get at cases where the agency
6 has treated facilities to be adjacent under or
7 within this distance or --

8 MR. O'BRIEN: Mr. Rubin whispered in my ear,
9 but he's right. We're asking if the agency has a
10 policy as to how far apart two facilities must be
11 to be considered no longer adjacent.

12 MS. SAWYER: I think he's already answered
13 that.

14 HEARING OFFICER EDVENSON: I am going to
15 sustain the objection based on the way the question
16 was originally phrased.

17 I think, though, that, Counsel, could you
18 explore your interest in the definition used by the
19 agency for the word "adjacent" by rephrasing your
20 questions in this area? The question was too
21 broad.

22 MR. O'BRIEN: I'll try it this way.

23

24

1 BY MR. O'BRIEN:

2 Q Can you tell us how the agency analyzes
3 the question of whether facilities are considered
4 adjacent?

5 A If that is the relevant criteria for
6 investigation, it would be looked at on a
7 case-by-case basis looking at the two entities,
8 how far apart they are, what the relationship is
9 between the two entities in terms of their
10 function, how they relate together, how other
11 similar businesses conduct their operation, what
12 are the nature of the physical connections that
13 exist between the facilities, what are the nature
14 of the nonphysical connections of the facilities.

15 We'd be open to any -- beyond those if
16 there are other factors that somebody identified,
17 it would be a case-by-case basis.

18 Q So is it fair to say that factors other
19 than distance go into the agency's determination
20 of whether two facilities are adjacent?

21 A Yes. Clearly we've indicated that the
22 nature of any physical connection between the
23 two facilities is considered, the nature of the
24 obstacles perhaps and then the functional

1 relationship between the two entities.

2 Q In other words, would the fact that the
3 two facilities had what may be construed as a
4 support facility relationship play a role in
5 determining whether facilities are considered
6 adjacent?

7 A It could, yes.

8 MR. O'BRIEN: If I could take just a minute.

9 (Pause.)

10 MR. O'BRIEN: Just a couple more.

11 BY MR. O'BRIEN:

12 Q Does the agency have any written document
13 that defines how close facilities have to be to be
14 considered adjacent that's available for guidance?

15 A We have no prepared document of that
16 type. Any guidance we have would be on a
17 case-by-case basis to an individual source for a
18 particular circumstance.

19 Q So in each instance where this issue
20 arises it's going to be up to the discretion of
21 the agency whether the facilities are considered
22 adjacent or not?

23 A I would not use the term "discretion."
24 It's part of the decision that has to be made for

1 permitting in that we have to use the authority
2 granted to us by the act to decide, in fact,
3 whether they have complied with the particular
4 regulations.

5 Q But there is no distance benchmark in
6 terms of number of feet or miles that is applied to
7 the analysis of that question; is that correct?

8 A We have not established such a benchmark
9 at this point beyond the 20 miles that I can point
10 to in the USEPA's preamble.

11 MR. O'BRIEN: That's all I have. Thanks.

12 HEARING OFFICER EDVENSON: I have a couple
13 questions myself that came to my mind during
14 Mr. Romaine's testimony that I thought I might ask
15 for the board, and should I do that now?

16 MR. LAYMAN: I don't care as long as I have an
17 opportunity to redirect.

18 HEARING OFFICER EDVENSON: Okay.

19 EXAMINATION

20 BY HEARING OFFICER EDVENSON:

21 Q Some of these might be somewhat
22 repetitive; but they do go to the foundation, I
23 think, on the basis for the decision that you are
24 talking about making in these kinds of situations.

1 When you stated that when you're looking
2 at the definition of "source" you are looking at
3 location, proximity, supervision and control
4 besides what you call functional criteria, I was
5 curious about your use of the word "proximity." Is
6 the word "proximity" in the rules and regulations
7 somewhere?

8 A No, it is not.

9 Q Okay.

10 A The term "proximity" is used in USEPA's
11 preamble, but that's the term I was using as an
12 umbrella term for the terms "contiguous" and
13 "adjacent."

14 Q Okay. You made reference to definitions
15 of the word "source" that are effective in
16 different programs; and I am unfamiliar with the
17 names of the different programs that would have
18 different definitions of source and what definition
19 would be applicable to this specific permit, and it
20 may be simply because I have not gone into depth in
21 the record.

22 But could you identify the permit type
23 that's the program definition of "source" that
24 applies in this case?

1 A In this case we made a completeness
2 determination under the CAAPP program, Illinois'
3 Clean Air Act Permit Program.

4 The definition that we specifically point
5 to for that program would be the definition of
6 "stationary source" under Section 39.5 of the
7 act.

8 Q Okay, thanks. So, when you were referring
9 to the type of review you would do in classifying a
10 facility in terms of the definition of "source" and
11 you referred to a permit for a new source, is that
12 the type of permit review that you were doing in
13 this case?

14 A That was the type of permit review we
15 were doing back in April and May of '95 for Color
16 Communications.

17 So it was not the basis for the
18 determination in November of '95 on the Clean Air
19 Act Permit Programs, but it was the basis of a
20 prior determination that we believed should also
21 be reflected in the Clean Air Act Permit Program
22 permit application.

23 Q You made reference to, I believe, a case
24 decision entitled Alabama Power?

1 A That's correct.

2 Q Was that case the same type of permit
3 application and subject to the same laws as the
4 petitioner's operations are in the current permit
5 appeal, do you know?

6 A No, it was not. The Alabama Power case
7 was an appeal of USEPA's rule making on the
8 prevention of significant deterioration rules and
9 their nonattainment area rules. So it was an
10 appeal of a rule making. It was not an appeal of
11 actions pursuant to a rule.

12 Q And, when you referred to Acme Steel
13 permits that identify it as a single source, do you
14 happen to know if any of those permits that were
15 referenced are currently of concern in open cases
16 before the Pollution Control Board or do you just
17 happen to know?

18 A I don't believe so. I'm not aware that
19 they are.

20 Q And then the same for Lone Star. Do you
21 happen to know if the Lone Star permits are the
22 subject of any current open case?

23 A I don't believe they are.

24 Q Now, you made general references to

1 guidance with respect to the meaning of the word
2 "adjacent" and the way in which you use it in
3 decisions.

4 However, are there any written guidelines
5 that are currently in the agency record that we
6 have here and/or are there other identified written
7 documents that include any statements related to
8 the definition of "adjacent" by USEPA or IEPA that
9 would be of assistance to the board?

10 A It certainly would be appropriate if the
11 board wanted to look at the new source review
12 workshop manual as the most definitive companion
13 of USEPA interpretations and guidance with respect
14 to new source review.

15 There may be some other determinations
16 that are relevant. Perhaps Mr. VanMersbergen can
17 discuss them later when he's on direct.

18 Q You use the word "contiguous" to describe
19 facilities that are not contiguous in the general
20 understanding of the word as being not next to one
21 another physically.

22 But, when I look at the section definition
23 on "source" at 211.6130, the word "contiguous" is
24 used only with respect to clarifying industrial

1 groupings and how they would be coded.

2 So is the word "contiguous" a word that
3 you also are using, then, to modify the word
4 "adjacent"?

5 A I'm not sure what you are referring to.
6 I was not using the word "contiguous" to modify the
7 word "adjacent."

8 I was using the word as found in the
9 rules to my recollection in terms of the proximity
10 criteria for defining "source."

11 The definitions do not use the word
12 "proximity." They use the term "contiguous" or
13 "adjacent."

14 Q And, when you referred to USEPA guidance
15 that you use in making these decisions, is that
16 document would that be in the form of rules and
17 regulations; or is your reference solely to the new
18 source review guidelines that you mentioned; or is
19 there some other material that you could help us or
20 that you have knowledge of that you could refer for
21 the board?

22 MR. LAYMAN: If I may ask for a clarification.
23 I think there were two types of guidance that were
24 discussed in Mr. Romaine's testimony. One guidance

1 document from USEPA, and then two specific guidance
2 or recommendations via letters and correspondence
3 from USEPA. You're referring to guidance
4 documents?

5 HEARING OFFICER EDVENSON: Well, the word he
6 used, I believe, was "guidance."

7 BY HEARING OFFICER EDVENSON:

8 Q And so I'm wondering if those are in the
9 form of documents of general applicability; or, if
10 they are in the form of documents on specific
11 cases, then I'm just wondering if you could give
12 us some detail on that; or, if there are some
13 guidelines of general applicability, you could
14 let us know if you know of them.

15 A The USEPA's preamble certainly discusses
16 the issue of proximity, so that's a preamble to
17 their adoption of PSD and new source review rules
18 back in 1980. That's a published document.

19 The next document I'd refer the board to
20 is the new source review workshop manual. That is
21 also a document that has been published by USEPA
22 and widely disseminated by them as a standard
23 reference tool, I think, for permittees,
24 consultants and permitting authorities.

1 Then the other documents would be, I'd
2 say, precedent type documents referring to specific
3 cases.

4 I'm not sure which documents of those are
5 in the record as compared to the interrogatory
6 response.

7 There may be additional documents that we
8 have only provided to Color Communications as part
9 of the interrogatories that we might be able to
10 provide to the board.

11 MR. LAYMAN: As far as the record is concerned,
12 there's the two letters of correspondence from
13 USEPA and attached to one of those letters was the
14 General Motors determination that had previously
15 been made by USEPA. That's all that's contained
16 in the administrative record at this point.

17 HEARING OFFICER EDVENSON: Okay. Could we
18 identify the page numbers for the record now or
19 later?

20 MR. LAYMAN: Sure. Page 2 is a letter dated
21 February 2, 1995. Pages 2 and 3 are that letter,
22 I should say.

23 Page 4 is the attached determination. In
24 fact, Pages 4 through 4A, Page 5 and 5A are the

1 determination letters attached to USEPA's letter
2 to the agency.

3 Those determination letters both address
4 the issue of General Motors and its Lansing,
5 Michigan facilities. The other USEPA
6 correspondence dated March 24, 1995, is found
7 at Bates No 7.

8 HEARING OFFICER EDVENSON: Okay, thank you.

9 MR. LAYMAN: Redirect?

10 HEARING OFFICER EDVENSON: (Hearing Officer
11 Edvenson nodded head up and down.)

12 MR. LAYMAN: Real briefly.

13 REDIRECT EXAMINATION

14 BY MR. LAYMAN:

15 Q Is it fair to say that one major factor
16 considered by the agency in determining that Color
17 Communications' facilities were adjacent or
18 contiguous in this case was, in fact, the close
19 location of the two facilities at the 4000 and
20 4242 West Filmore?

21 A Yes, it was. They were located just a
22 block apart. A block apart is not very far in an
23 urban area.

24 Q Is it also fair to say that the

1 interdependency of the facilities, the way in which
2 they acted as one or encountered with each other,
3 was also important in this context?

4 A Yes, it was.

5 MR. LAYMAN: That's all I have.

6 HEARING OFFICER EDVENSON: Is there any
7 recross?

8 MR. O'BRIEN: (Mr. O'Brien shook head back and
9 forth.)

10 HEARING OFFICER EDVENSON: All right. Thank
11 you very much, Mr. Romaine.

12 THE WITNESS: No problem.

13 (Witness excused.)

14 MR. LAYMAN: The agency will call its next
15 witness Mr. Ronald VanMersbergen.

16 MR. O'BRIEN: Can we go off the record for a
17 minute in terms of scheduling?

18 MR. LAYMAN: Yes.

19 HEARING OFFICER EDVENSON: Off the record.

20 (Whereupon, discussion was had
21 off the record.)

22

23

* * * * *

24

1 RONALD VanMERSBERGEN,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LAYMAN:

6 Q Would you please restate your name for the
7 record?

8 A My name is Ronald VanMersbergen.

9 Q And what is your occupation,
10 Mr. VanMersbergen?

11 A I'm an engineer with the U.S.
12 Environmental Protection Agency.

13 Q Could you give us a general idea as to
14 your education after high school?

15 A I graduated from University of Michigan
16 with a bachelor's degree in civil engineering. I
17 continued at the same university with a master's
18 degree in sanitary engineering.

19 I worked for EPA or for a predecessor of
20 EPA for a couple of years. I went to Penn State
21 University to get a degree in air pollution control
22 administration.

23 I've taken a number of courses with EPA in
24 my earlier career related to air pollution control

1 and management.

2 Q When did you become employed by the United
3 States Environmental Protection Agency?

4 A I had been working for either EPA or its
5 predecessor since 1963 after graduation with a
6 master's degree and continued with the agency until
7 about 1972.

8 Took a year and a half off to work with
9 private industry developing air pollution control
10 equipment and doing some consulting.

11 Then in 1974 or early '74 rejoined EPA,
12 at that time it was EPA; and I've worked with the
13 agency since that time either in permitting or
14 either in soot development for a couple of years.

15 And then in 1976 -- approximately 1976
16 focused in on new source review permitting and
17 have been involved in some aspect of permitting
18 continually since that time.

19 Q What current position do you hold for
20 USEPA?

21 A I'm currently recognized as a national
22 expert in air permitting.

23 Q What kind of responsibilities are entailed
24 with that position?

1 A I'm expected to assist the agency in
2 making national policy, assist the agency in
3 developing regulations, reviewing regulations
4 relating to permitting.

5 I expect to speak on behalf of the agency
6 in areas; receiving questions from industry
7 consultants, universities, law firms, other federal
8 agencies, with respect to air permitting.

9 MR. LAYMAN: Before we go any further and
10 before I forget I would at this point ask that
11 Mr. VanMersbergen's resume be marked and, in fact,
12 accepted into evidence.

13 BY MR. LAYMAN:

14 Q This is, in fact, a copy of your resume?

15 A That's correct.

16 MR. LAYMAN: That will be marked, again, I'm
17 sorry, as Respondent's Exhibit 3, I believe.

18 HEARING OFFICER EDVENSON: Yes, Respondent's
19 Exhibit 3. Is there any objection to the
20 introduction of this?

21 MR. O'BRIEN: No.

22 HEARING OFFICER EDVENSON: All right.

23 (Whereupon, document so offered
24 was marked and received in

1 evidence as Respondent's Exhibit
2 No. 3.)

3 BY MR. LAYMAN:

4 Q Going back to your official title and
5 responsibility for USEPA, national expert in
6 permitting matters implies more than just an
7 expert for Region 5; is that correct?

8 A That's correct. When EPA has to or feels
9 obligated to make policy decisions or change
10 directions, I'm involved in some of those types
11 of activities.

12 For example, I have been a member of the
13 air pollution control -- or, excuse me, air
14 pollution advisory subcommittee on reevaluating the
15 construction permit regulations; participated in
16 that.

17 I'm currently involved in what is called
18 the CSI, common sense initiative program, which the
19 current administration wishes to work with industry.
20 I'm involved in the automotive sector in that
21 aspect.

22 I get involved in other task force dealing
23 with developing guidance. For example, I
24 participated in a task force that developed the new

1 source review workshop manual that was referred to
2 earlier.

3 Those types of things.

4 Q How many other national experts are there
5 employed by USEPA for air permit matters besides
6 yourself?

7 A There is one expert in North Carolina that
8 works directly in our headquarters office, and
9 there is a person in one other region that has a
10 very similar responsibility at the same grade level
11 that his title is just slightly different. There
12 would be three of us.

13 Q As part of your work responsibilities in
14 that position have you become familiar with many of
15 the Clean Air Act programs and requirements?

16 A That's correct, I have, although I do not
17 claim a great deal of familiarity and expertise
18 with respect to the automotive program.

19 Q Are you familiar, then, with the federal
20 new source review requirements for PSD?

21 A That's correct, I am.

22 Q How are you familiar? In other words, how
23 do you work with that in your current position?

24 A I have assisted in the very early years

1 reviewing the initial PSD regulations that are the
2 basis for the current program. That would be the
3 August 1980 regulations. Assisted in development
4 of those regulations.

5 Participated and then delegating that
6 program to various state agencies.

7 Assisting states in developing their own
8 regulations if they so choose to in reviewing those
9 regulations for approval or disapproval.

10 What I do is participate in training
11 programs -- national training programs that may be
12 sponsored by various organizations explaining these
13 regulations. I may have some part in that or
14 develop training schools for these programs.

15 More towards the mundane I do paperwork or
16 I train people in our own office. I have reviewed
17 permits that may come into our office for
18 oversight.

19 I have some period of time assisted or
20 reviewed or audited, I would say, state permitting
21 programs to see whether they had procedures that
22 would result in implementing permit decisions that
23 would be consistent with the national policy.

24 Q When you say you've participated in

1 seminars, I take it you mean both attended as well
2 as conduct; is that correct?

3 A Well, primarily conducting the seminars.

4 Q You did do that?

5 A We've conducted seminars in each one of
6 the Region 5 states. Then there would be seminars
7 -- two seminars that were put on by the National
8 Air Pollution Control -- well, the National Air &
9 Waste Management Association sponsored seminars.
10 Participated in instruction at those seminars.

11 Q Are you also familiar with the Clean Air
12 Act federal nonattainment area new source review
13 program?

14 A That's correct, I am.

15 Q How are you familiar with that?

16 A That program and the PSD program have many
17 similarities in Region 5 where we are expecting
18 states to develop regulations to meet the Clean
19 Air Act requirements and assist in reviewing or
20 participate in overseeing the review of the
21 development of these regulations, and then the
22 final approval or disapproval of these regulations
23 at the state program.

24 And, then again, in the oversight of

1 permits that may emanate from these programs most
2 states have arrangements with us where we receive
3 copies of major source permits prior to or during
4 the public comment period.

5 We look at these permits such that we
6 can be assured that decisions are consistent with
7 national policy.

8 This is something that EPA wants to do
9 is try to make sure that these regulations are
10 interpreted at a consistent manner across the
11 nation so that there is no competitive advantage
12 of one over another because of inconsistent
13 interpretations, so part of my responsibility is
14 to look at permits to look for this.

15 Q Have you, in fact, been involved with this
16 type of oversight for the Illinois new source
17 review nonattainment area program?

18 A That's correct, I have.

19 Q Have you also been involved with that type
20 of oversight for the federally delegated PSD
21 program to Illinois?

22 A That's correct.

23 Q And why is it that that role or what
24 purposes, I should say, does that role serve, do

1 you believe, in that new source review context?

2 A It serves two purposes. One purpose is to
3 make sure that the state is familiar with what the
4 federal regulations are, and in some cases we can
5 even assist the state in managing a state program
6 by knowing what goes on in other -- what is
7 happening in other states.

8 The other purpose is to assure that the
9 federal regulations are consistently applied in
10 this country.

11 Q Are you familiar in light of your present
12 responsibilities with the Clean Air Act federal
13 permitting program under Title 5?

14 A That's correct.

15 Q Are you also familiar with USEPA's Part 70
16 federal rules?

17 A That's correct.

18 Q Have you had a role or assistance, if you
19 will, in developing those regulations?

20 A Early in 1990 when the Clean Air Act was
21 passed I spent a ten-week period in North Carolina
22 working with the group that was developing these
23 regulations, participated in the initial
24 structuring of these regs during that particular

1 time. That was a full-time activity for that
2 ten-week period.

3 Since that time I have participated in
4 reviewing proposed amendments to those regulations
5 and assisting in interpretations of policy and
6 trying to guide the national policy in implementing
7 this Part 70 regs.

8 Q Are you familiar with the Illinois Title 5
9 program as it has been approved by USEPA?

10 A To a degree I'm familiar with it. One of
11 our other individuals reviewed it underneath my
12 oversight. I did not read the full rule myself.
13 Just parts here and there where there were
14 questions as to whether or not it was consistent
15 with the federal regs.

16 Q Have you assisted Illinois as well as
17 other states in addressing relevant or recent CAAPP
18 permitting issues since its enactment?

19 A When questions come up with respect to the
20 CAAPP program that the state feels that they would
21 like to have a federal input, I participate in
22 that.

23 And the reason for that is that the state
24 CAAPP program is intended to meet the federal Clean

1 Air Act requirements and inasmuch as a regulation
2 cannot cover every aspect of managing the program,
3 then we provide an interpretation to rules because
4 we are trying to make sure that what Congress has
5 intended, passing that message from what Congress
6 has intended and the courts interpret down to the
7 state as the state tries to implement the intent of
8 Congress. That is our concern, and that's why we
9 look at these permits and answer policy questions.

10 Q Given your experience and, in fact, from
11 some of your testimony you are, then, familiar with
12 stationary source definitions for both the PSD and
13 the nonattainment area NSR, new source review
14 program?

15 A That's correct.

16 Q What do the definitions generally provide?

17 A The definition of "major source" for
18 nonattainment PSD came from the Clean Air Act and
19 have had major impact upon that definition as a
20 result of the Alabama Power case which was referred
21 to earlier in the testimony.

22 In the Alabama Power case the court
23 instructed EPA to write regs or give a more precise
24 definition of what a source is between the criteria

1 of common sense industrial grouping and as one
2 criteria.

3 Another would be the assurance that the
4 purpose of PSD would be met; and then, thirdly, to
5 make sure that as we group activities for a major
6 source that we didn't aggregate something in too
7 broad a sense.

8 So with that instruction of Congress we
9 developed for a regulation promulgated August 7,
10 1980, defining major source or its sister
11 definition of a building structure and facility.

12 In that definition we tried to implement
13 what Congress has intended by common sense
14 industrial grouping by setting up criteria -- broad
15 criteria in terms of how we define a source that
16 had to be for a common sense industrial grouping.

17 We were trying to look at SIC code and
18 its support facilities as defined in our regs
19 common control and adjacent, contiguous piece of
20 property.

21 So that's how that definition occurred,
22 and that's the definition with respect to PSD and
23 nonattainment. As we pointed out earlier, Title 5
24 is just a bit broader.

1 Q Now, you are familiar with Title 5
2 definition of "source" as well?

3 A That's correct.

4 Q Are there any significant differences
5 between source definition from one program to the
6 other?

7 A In the Title 5 program the Congress
8 directly defines "source" without using the SIC
9 code as distinguishing features for toxic materials
10 resulting in situations where you could have
11 different types of activity that one wouldn't
12 consider the same SIC code, but the toxic materials
13 from both those activities would be grouped
14 together to determine whether or not a major source
15 met the emission threshold level. That's the
16 primary difference.

17 Q Okay. In the context of how these
18 issues arise to your attention, how are source
19 determinations generally made by USEPA?

20 A When we make these determinations, we,
21 first of all, go to the regulation to determine
22 what the regulation may obviously say; and, if
23 it's not clear in the situation, then we depend
24 upon previous policy determinations that have

1 been made.

2 These policy determinations are brought
3 together in a three-volume manual that EPA has that
4 is publicly available.

5 These determinations are
6 in forms of letters most frequently or possibly
7 memos. Those policy determinations most of them
8 are on an electronic bulletin board that EPA has.

9 And then in the third area we have a
10 manual that we have brought together summarizing
11 these determinations called the new source review
12 workshop manual.

13 Now, in making a determination, we will
14 see whether or not -- see what has been done with
15 previous determinations, okay? It's tried to keep
16 within those guidelines.

17 If we have situations that arise that are
18 outside that determination, then what we would do
19 is bring the problem to our -- our general counsel
20 in Washington would be a participant, our office
21 enforcement a participant and then the program
22 people three headquarters groups then as well as
23 regional people bringing in the regional experts
24 on these questions and try to determine what a

1 national policy should be.

2 Q Regarding the criteria of a source
3 definition for major industrial groupings, what
4 does USEPA first generally look at in applying that
5 definition to a particular set of facts?

6 A We take a look at the -- well, first of
7 all, we look at three major criteria.

8 The common control of which ownership is
9 the biggest factor, but there can be contractual
10 arrangements that provide control.

11 We look at the activity that's occurring
12 at the source; and, if it comes within -- the
13 activities they fall within the first two-digit
14 SIC code, we generally will let that sit at that
15 level.

16 If there are activities that expand beyond
17 the SIC code, we will look to see whether or not
18 these activities are support activities.

19 Support activity, then, would be an
20 activity that is an activity engaged in or one of
21 the functions that occur at a source such that we
22 generally generate a principal product.

23 That could be a couple of different SIC
24 codes that make contribution; but, if we end up

1 making a principal product, we look at those
2 activities and make that principal product.

3 We try to group these activities to see
4 whether or not we have a -- in terms of common
5 sense definition whether or not they occur in an
6 adjacent or contiguous area.

7 The Clean Air Act refers to a contiguous
8 area in some places. It's a little -- I admit it's
9 a little confusing in some aspects.

10 But we'll take a look at adjacent and
11 contiguous locations; and, if the activities occur
12 in the proximity neighborhood, then we will say
13 this is the same source, and we will make those
14 determinations based upon earlier determinations
15 such that we have a consistency.

16 There is some federal guidance as referred
17 to earlier. If something is 20 miles apart, we
18 would say that is too far. We have made
19 determinations at lesser distances that we feel
20 fairly comfortable with.

21 Q Can you describe for us an example
22 illustrating perhaps what a support facility is?

23 HEARING OFFICER EDVENSON: Could you speak up
24 a little more --

1 MR. LAYMAN: I'm sorry.

2 HEARING OFFICER EDVENSON: -- for the benefit of
3 others in attendance?

4 MR. LAYMAN: Yes.

5 HEARING OFFICER EDVENSON: Thank you, both of
6 you.

7 THE WITNESS: A support facility would either
8 generate a subproduct or provide some kind of
9 service that is necessary in manufacturing or
10 assembling or producing a final principal product.

11 For example, a support facility might be
12 a power plant which has a completely different SIC
13 code, a completely different set of functions, than
14 a chemical plant; but the power plant obviously is
15 supporting the chemical plant to make a principal
16 product. That would be a support facility.

17 So we take a look at what the principal
18 product is, is there a relationship, a functional
19 tie, between the emitting activity that we're
20 concerned about and the principal product to get
21 a common sense definition of the pollutant emitting
22 activities.

23

24

1 BY MR. LAYMAN:

2 Q Is there any commonly applied threshold
3 for determining whether one facility is a support
4 facility for another?

5 A Yes. Let's say the power plant as an
6 example. If there were a power plant at an
7 industrial site and it gave one-third of its
8 energy to three different plants evenly, we'd say
9 that's not a support facility.

10 But, if it had at least 50 percent of its
11 energy production donated to one activity, then
12 we'd say this is a support facility. So 50 percent
13 would be the cutoff that federal guidance would
14 use.

15 Q And is this rule as it relates to support
16 facilities something that's commonly applied by
17 USEPA?

18 A This is in our federal guidance preamble
19 that preceded the August 7, 1980, regulations for
20 PSD and for nonattainment; and so it's applied, and
21 we have been applying it for the last 15 or 16
22 years.

23 Q I take it it's not uncommon then --

24 A No, it's not uncommon at all.

1 Q -- to be presented?

2 A As a matter of fact, I don't think we've
3 had any determinations recently on this issue
4 because it's fairly well accepted as a support
5 facility.

6 Q As to the source definition criteria for
7 location that of adjacency and contiguous, what
8 will USEPA generally look at in any given case?

9 A You have to recognize that the basis for
10 why we come to these three regulatory criteria,
11 that is a common ownership adjacency as well as the
12 activity that's engaged in, we're trying to group
13 sources together or Congress intended us to group
14 sources together; and the original basis for this
15 or one of the dominating basis for this is try to
16 relate this to air quality impact and activities
17 that could be brought together that may have a
18 similar impact in some area was important to us.

19 So much of this came out of the air when
20 we were pressing on a particular matter and sulfur
21 dioxide. That gave us some clues as to where we
22 were headed.

23 So the adjacency issue, then, may have
24 some impact there at least in our traditional

1 manner of looking at sources, and in an effort to
2 keep consistent we've carried that forward.

3 As we look at these three type of
4 criteria, we are still trying to make a common
5 source or common sense grouping of emission
6 activities. Common sense grouping. That's the
7 guides the court gave us.

8 And so we recognize that there are
9 case-by-case determinations, and not every -- a
10 case-by-case determination goes beyond just
11 distances.

12 It's not very difficult for us to get
13 a ruler out and measure distances. We don't have
14 to need case-by-case determinations.

15 We bring in some other factors we believe
16 are appropriate, and that is some of the functional
17 relationships at an activity to help us make a
18 determination.

19 We've made some determinations, and with
20 that in mind we take a look at the other activities
21 -- the functional relationship, I should say, of
22 the activities occurring at the facilities in
23 question.

24 Q It is possible, I take it from the way you

1 answered the last question, that activities can be
2 located at a different site or --

3 A Excuse me?

4 Q It is possible that activities can be
5 located separately or separated by distance and yet
6 still treated as one source?

7 A I'm presuming you say is it possible that
8 activities may be on properties that don't have
9 touching boundaries?

10 Q Correct.

11 A That is very frequently the case. That's
12 a very common situation.

13 Quite frequently we will have separate
14 pieces of property that are separated by public
15 right-of-ways, possibly by a private railroad. So
16 that's private property that would separate pieces
17 of property.

18 There may be other geographic features
19 like rivers or streams that might separate two
20 pieces of property.

21 But as long as these activities are
22 grouped functionally and are reasonably close, then
23 we call that a source -- single source.

24 Q Those factors that you have just described

1 are those fairly common or characteristic of a
2 long-line operation?

3 A Oh, yes. That's correct. That's correct.

4 Q Are you aware of any cases involving
5 either PSD or nonattainment area new source review
6 where USEPA has considered separate buildings or
7 facilities to be one source even though they were
8 separated by some distance?

9 A Yes, I am.

10 Q Can you give us one such example?

11 A One such example, okay, fine.

12 General Motors in Lansing, Michigan is a
13 situation where there are two activities dealing
14 with the generation of a -- I believe it's an
15 Oldsmobile where painting activities occur at two
16 different locations separated by a distance of
17 close to three-quarters of a mile.

18 And we've indicated that that is a single
19 source because of the long line; that is, a
20 continuation of making a subproduct into a final
21 product. That's the furthest distance that I have
22 been personally involved in.

23 And then there are numerous other
24 distances that are shorter than that along the

1 categories that I earlier described across the
2 river and things like this.

3 MR. O'BRIEN: Could I ask the answer be read
4 back?

5 THE WITNESS: Sure.

6 (Whereupon, the record was read
7 by the reporter as requested.)

8 BY MR. LAYMAN:

9 Q In the General Motors' case do you recall
10 how at the time the determination was made
11 materials and products were being conveyed between
12 facilities?

13 A The body of the car without the doors or
14 trunk and hood, I believe, the bodies of the car
15 were painted at one location, put on a truck and
16 trucked to the other location where they were
17 assembled and made into Oldsmobiles.

18 There may have been other -- well, there
19 was, I think, another connection between those two
20 properties with respect to a railroad; but the
21 railroad was not a functioning activity in terms
22 of transporting at this particular time.

23 Q Okay. How did you first become involved
24 in the source issue relating to Color

1 Communications?

2 A I'm a team leader at our office. We have
3 eight or ten people dealing with permitting. We
4 meet each week and discuss current problems, new
5 policies and so on.

6 At one of these meetings one of the
7 engineers that is assigned to Illinois brought this
8 issue up and described it, and it was an ideal
9 teaching situation to bring out a common point.
10 So that's my first exposure to it.

11 Q And what was your understanding at that
12 time about the nature of the relationship between
13 the facilities at Color Communications?

14 A Okay. What was revealed to me at that
15 time was that a map was drawn on a board showing
16 two locations about a block apart, that a certain
17 printing or coating operation occurred at one
18 source, and then that product was transported to
19 another location where it was generated into a
20 final product. At that particular point in time
21 that's all I knew about this situation.

22 Q Was there any aspect of that relationship
23 at Color Communications that was similar to the
24 interpenancy (phonetic) at the General Motors'

1 facility or as found to be existing in that General
2 Motors' case?

3 MR. O'BRIEN: If you will, let me object to the
4 form of that question especially related to the --
5 did you mean any interdependency or independency?

6 MR. LAYMAN: I'm sorry.

7 MR. O'BRIEN: I really didn't follow that.
8 Maybe you could rephrase it.

9 MR. LAYMAN: Allow me to rephrase the question,
10 if I may.

11 HEARING OFFICER EDVENSON: Okay.

12 BY MR. LAYMAN:

13 Q Was there any aspect of Color
14 Communications' business relationship that was
15 similar to the General Motors' case in that General
16 Motors' facilities were operating as one or
17 interdependently?

18 MR. O'BRIEN: I think I also have to object to
19 that question to the extent it's very leading in
20 that it assumes that the GM facilities were acting
21 as one, so that's an objection to form.

22 HEARING OFFICER EDVENSON: Objection
23 sustained.

24

1 NY MR. LAYMAN:

2 Q Were there any common characteristics as
3 to the type of business relationship between Color
4 Communications and that that was found to exist in
5 General Motors' case?

6 A Yes. There were similar relationships.

7 THE WITNESS: Let me ask this. Can I pause
8 here and ask a question of you?

9 HEARING OFFICER EDVENSON: (Hearing Officer
10 Edvenson nodded head up and down.)

11 THE WITNESS: Okay. There are some things that
12 I learned today that I may not have known back
13 then.

14 Can they come into my testimony, or do I
15 have to answer the question with respect just to
16 what I knew at the time?

17 MR. LAYMAN: I would ask that the witness be
18 instructed to answer the question on the table, and
19 we can proceed from there and to --

20 HEARING OFFICER EDVENSON: I understood the
21 context of the question to be what he knew at a
22 certain time when he was looking at information --

23 MR. LAYMAN: That's correct.

24 HEARING OFFICER EDVENSON: -- that had a

1 factual scenario similar to the Color
2 Communications' scenario.

3 So I would have to ask that you answer
4 this question with respect to what you were looking
5 at when you were looking at this factual scenario
6 in the past.

7 THE WITNESS: Okay. When this problem was
8 first brought to us, the problem was first brought
9 to us and then I participated in providing guidance
10 and development of a new letter for Mr. Rothblast's
11 signature.

12 The things that impacted me at that point
13 were the fact that in the General Motors' case
14 there was a management of the product development
15 at one site that dictated how the final -- that was
16 coordinated with the development of the final
17 product.

18 That is, the subproduct was developed in
19 such a manner that it fit into development of the
20 final product. That was important for us in
21 General Motors.

22 As the facts were presented to me then
23 with respect to the time frame we're talking
24 about, I was impacted by the fact that there was

1 a subproduct that was being developed that had
2 to have further actions upon it to make a final
3 product.

4 So that seemed to be the same thing as
5 what was happening in General Motors with respect
6 to the relationship of the two activities at the
7 two sites.

8 Q Okay. With respect to the relationship at
9 the Color Communications' facilities are there any
10 new facts that you have become aware of since that
11 time that further support a determination that was
12 made by USEPA previously?

13 A Yes, there are. I have come to understand
14 that at General Motors the quality of product that
15 was generated at one site was very crucial in terms
16 of the quality of the final product at General
17 Motors.

18 Basically the color of the paint on the
19 hood they felt that the customer wanted the color
20 of the paint on the hood to match the color of the
21 paint on the top of the car.

22 I understand that the management of
23 quality in this particular case before us at the
24 initial activity is important for the final quality

1 of the product, okay?

2 So I saw an interdependency in that aspect
3 of the source, okay? I'm relating these two
4 activities.

5 Q Were you aware that IEPA subsequently
6 issued operating permits to Color Communications
7 after the time in which you provided or Region 5
8 USEPA provided guidance to the agency on the source
9 determination?

10 A Could you define operating permit for me?
11 I know of two types of operating permits in
12 Illinois. One is what we call CAAPP. The other is
13 underneath their older operating permit program.

14 HEARING OFFICER EDVENSON: Can you clarify your
15 reference, Mr. Layman?

16 MR. LAYMAN: Yeah.

17 BY MR. LAYMAN:

18 Q In this case it's the older state version
19 permits that were pending at that time in 1994.
20 Were you aware that they were --

21 A Come to think of it, I'm not aware of
22 either.

23 Q Were you made aware after the guidance
24 was provided to IEPA that IEPA went on to find the

1 facilities to constitute one source as opposed to
2 two?

3 A Yes.

4 Q And have you since become aware that Color
5 Communications submitted separate CAAPP permit
6 applications for each of its facilities there?

7 A That's correct. I'm aware of that.

8 Q And you are also aware that IEPA
9 subsequently issued a notice of incompleteness to
10 Color Communications for that same reason?

11 A That's correct.

12 Q Does USEPA believe that IEPA's source
13 determination for purpose of CAAPP was consistent
14 with the earlier determination made respecting new
15 source review?

16 A That's correct. We would consider this a
17 correct determination. We feel that the new source
18 review policies, though established for new source
19 review, was in the mind of Congress when they
20 formed Title 5 regulations or Title 5 legislation.

21 We picked that up directly. I am aware of
22 that because I worked on the earlier regulation
23 development.

24 It was a determination to pick up new

1 source review, try to keep -- pick up the new
2 source review policy determinations and regulations
3 and try to keep our regs simple.

4 So based on that I am of the opinion that
5 the IEPA's determination that this is one source is
6 consistent with what Congress intended for Title 5.

7 Q Now, does this promote any goals in terms
8 of uniformity for federal program requirements in
9 your view?

10 A As I indicated earlier, one of the primary
11 functions -- one of the functions that I have as a
12 federal employee with oversight is to assure that
13 we have common implementing of the Clean Air Act,
14 and that was the reason why EPA sent this letter to
15 the State of Illinois is to make sure that we were
16 implementing the Clean Air Act in this particular
17 case consistent with how we were implementing the
18 Clean Air Act nationally.

19 MR. LAYMAN: I believe that's all we have for
20 now.

21 HEARING OFFICER EDVENSON: Why don't we take a
22 five-minute recess.

23 MR. LAYMAN: Okay.

24 (Recess taken.)

1 HEARING OFFICER EDVENSON: Then we will proceed
2 with the cross-examination of Respondent's second
3 witness.

4 MR. O'BRIEN: Thank you.

5 CROSS EXAMINATION

6 BY MR. O'BRIEN:

7 Q Mr. VanMersbergen, I just have a
8 clarification question about your resume which I
9 believe was marked as Respondent's 3.

10 MR. O'BRIEN: Is that correct?

11 MR. LAYMAN: (Mr. Layman nodded head up and
12 down.)

13 BY MR. O'BRIEN:

14 Q Under the title 1976 to 1994 designation
15 regional new source review expert, is that a title
16 that was given to you by the USEPA?

17 A Yes, that's correct. It's in my -- it's
18 in a position description for a position that I
19 applied to, so it's a title.

20 Q What is your position that you held from
21 1976 to 1994 if other than the description of
22 regional new source review expert? Was there a
23 separate position title, in other words, is what
24 I'm driving at.

1 A Oh, I'm not sure what you're driving at;
2 but I could possibly answer your question, okay?

3 Underneath the civil service system
4 individuals are classified in terms of their
5 disciplines or their potentiality, and one could
6 be called an environmental specialist; and the
7 agency did that so that they could identify people
8 that may have -- well, so I was classified as an
9 environmental specialist, okay, at that point in
10 time to come into the agency for as a position.

11 Q That does answer my question.

12 Did that position designation of
13 environmental specialist change in 1995 when your
14 resume indicates that your description changed to
15 "national air permitting expert"?

16 A That's correct. A new job description
17 had to be prepared. It had to be completed --
18 completed for because it was a different GS level.

19 And so there was a new job description,
20 and that job description has the title the national
21 air permitting expert.

22 Q Now, you described what your position
23 entails and how it relates to the state programs
24 that are going on.

1 Is part of your job interpreting
2 individual state regulations as they apply to air
3 pollution?

4 A I do not interpret state regulations.
5 I determine -- I make interpretations of state
6 activities as to whether or not they are meeting
7 the federal requirement for which the state
8 regulation was intended to prove to me.

9 HEARING OFFICER EDVENSON: Mr. VanMersbergen?

10 THE WITNESS: Yes, ma'am?

11 HEARING OFFICER EDVENSON: Perhaps if you move
12 your seat back further then the court reporter will
13 be able to hear your answers better.

14 BY MR. O'BRIEN:

15 Q Would it be fair to say, then, that one
16 of the things that you're looking for in terms of
17 looking at state applications or state activities
18 is consistency with the federal regulations and
19 consistency with the federal air pollution program?

20 A There are two things that we may comment
21 on. That is one of the things that we would be
22 looking for.

23 Q What is the other thing you might comment
24 on?

1 A The other thing we may comment on is we
2 feel that the state would be our partners in air
3 pollution, so we would be willing to comment on
4 things that we felt would improve program
5 operation, okay?

6 If I didn't think I would hurt Chris
7 Romaine's feelings, I would suggest, Chris, this
8 may be another way to look at this.

9 Q In your testimony I think you referred
10 to the case where the instance of the 20-mile
11 separation between facilities as being one where
12 the USEPA determined that those facilities would
13 not constitute separate sources. Are you familiar
14 with that instance?

15 A You said would not constitute separate --

16 Q I have that backwards. Let me ask that
17 again.

18 You referred to in your testimony the
19 instance that Mr. Romaine had also referred to a
20 situation where facilities separated by 20 miles
21 would constitute separate sources under the USEPA's
22 interpretation. Do you recall that?

23 A That's correct. I recall that I referred
24 to that.

1 Q Now, you also said that there are some
2 closer distances which we are comfortable with.
3 Can you tell me what you meant or explain to me
4 what you meant by that testimony?

5 A Certainly, I can. For example, the
6 General Motors' plant that was nearly a mile,
7 okay?

8 And so, when somebody would bring up an
9 occasion that would be less than a mile, we would
10 say, look, we made a determination for a mile with
11 General Motors and we feel that you ought to be
12 doing the same thing.

13 And we wouldn't feel necessary to go on
14 in and take a look at a lot of other details in
15 this particular situation. So some of the other --
16 okay.

17 Q Are you familiar with any cases or
18 instances or decisions that have had to have been
19 made where the distance between the facility was
20 between 20 miles on the long end and the mile or
21 three-quarters of a mile that you were presented
22 with at General Motors?

23 A I heard Mr. Romaine offer testimony of two
24 sources, Acme Steel and -- at two different

1 locations of ten miles, okay? I am aware of that.

2 Q Are there any other ones that you have
3 been asked to or the USEPA has been asked to either
4 advise or rule on that presented that situation
5 where the facilities were separated by between 20
6 miles on the high end and three-quarters to one
7 mile on the low end?

8 A Let me qualify your question to your
9 advantage here.

10 Absent other factors we are now dealing
11 with a situation on an air force base where the
12 property is completely owned by EPA or completely
13 owned by the federal government, one ownership.

14 And on some of these air force bases
15 we have activities that are separated by great
16 distances, and we are wondering whether or not or
17 how these should be grouped. So I'm aware of the
18 agency looking at that activity, okay?

19 Q So those determinations haven't been made
20 yet, correct?

21 A They haven't -- there is no public
22 statement with respect to those determinations.

23 Q I'd like to ask you a couple questions
24 about the General Motors' instance that you talked

1 about.

2 I believe you testified that those
3 facilities were -- let's see if we can get it
4 right.

5 Are they three-quarters of a mile apart
6 or a mile apart? Do you remember exactly how far
7 apart they are?

8 A I believe the letter suggests -- the
9 policy letter says 4500 feet, okay, recognizing
10 that 4500 feet is a rounding of something.

11 Q Now, were you involved in the decision
12 making back in I believe it was 1981 when this
13 issue was presented to the USEPA?

14 A Yes. Excuse me. What date did you say it
15 was presented?

16 Q I have 1981.

17 A Okay, fine.

18 Q So you were at that time, I suppose,
19 familiar with the facts of the case as they had
20 been presented to you by General Motors, correct?

21 A That's correct.

22 Q You stated that the reason for considering
23 these two facilities as a single source is because
24 of the long-line production in which the production

1 at the facility was continued from one plant to
2 another. Is that a fair summary of your testimony?

3 A That's what I said. That's correct.

4 Q And I believe you also testified that
5 there was a rail line that existed between the two
6 facilities; is that correct?

7 A That's correct.

8 Q Now, was it your testimony that the
9 railroad wasn't functioning at the time that this
10 determination was made?

11 A No. That was not the intent. The intent
12 of what I was trying to say is that General Motors
13 was not using the rail activities to transport
14 partially complete vehicles from one area -- excuse
15 me, from one location to another.

16 Though that may have been a possibility
17 on General Motors' part, they were not doing that.
18 They were transporting by road.

19 Q Were those GM plants both receiving raw
20 materials via the rail spur that was connecting the
21 two facilities?

22 A I'm not aware of that happening.

23 Q Let me show you what has been marked as
24 Respondent's Exhibit 1, and we're looking at Volume

1 1 of the record in the case. I will show it to
2 you. This is Page 4.

3 Let me ask you first if you are familiar
4 with this memorandum dated June 8, 1981.

5 A Well, I'm generally familiar with it. I
6 might not have every detail down pat.

7 Q Let me just turn the page for you; and
8 the last line says, "Please contact Ronald J.
9 VanMersbergen for further information." That
10 refers to you, correct?

11 A That's me.

12 Q I don't suppose there are too many other
13 VanMersbergens.

14 A Not Ronald Js.

15 Q Okay. Let me direct your attention to the
16 last full paragraph on Page 4 of the record, and
17 the last sentence in that last paragraph starting
18 with "With the distance" and ask you to look at
19 that.

20 A Okay.

21 Q Okay? And you've read that sentence which
22 reads, "With the distance between the two plants
23 less than one mile and the plants being connected
24 by a railroad used only for GM, we believe that the

1 plants meet the requirement of being adjacent and,
2 therefore, can be considered one source." That's
3 what you just read, correct?

4 A That's correct.

5 Q So is it fair to say that at least in
6 this memo one of the factors that was considered
7 in determining that the two GM plants can be
8 considered one source was the fact that there was
9 a railroad connection between the two plants that
10 would be used only for GM?

11 A You added "used only for GM," and that's
12 not what I understood this to be.

13 Q Well, let's take a look again at the
14 sentence. That's probably unfair of me.

15 A Okay. All right, fine.

16 Q So, again, just for the record --

17 A Okay. It --

18 Q Yeah. Let me put it again so we get it
19 right.

20 Is it fair to say that one of the factors
21 that went into the agency's determination that the
22 plants could be considered one source was that the
23 plants were connected by a railroad to be used only
24 for GM?

1 A That's correct.

2 Q In the case of the GM plants were both
3 plants classified under the same SIC code?

4 A Yes, they were.

5 Q I'd like to ask you a couple questions
6 about the concept of support facility, and you
7 mentioned that one of the places that support
8 facility is discussed is in the new source review
9 workshop document which I believe was published
10 in 1990 by the agency; is that correct?

11 A Yes. It's referred to in that document,
12 certainly.

13 Q And, when you're describing support
14 facility, you testified that your understanding of
15 it or the common understanding of it was that if 50
16 percent or more of a facility's output is sent to
17 another facility for further processing that those
18 two facilities -- the first facility would be
19 considered a support facility to the other. Is
20 that an accurate statement?

21 A That's correct.

22 Q Does that 50 percent cutoff, if you will,
23 appear anywhere in the USEPA's Part 70 regulations?

24 A Not in terms of print. Concept is there,

1 of course.

2 Q And what's the source of the concept in
3 the regulation?

4 A The development of the Part 70 regulations
5 uses the term "source," and that term "source" is
6 taken from Congress' placing it within the Clean
7 Air Act which Congress had understood what EPA was
8 meaning when -- Congress understood what major
9 source meant when EPA defined or when EPA uses
10 "source."

11 And then the Clean Air Act definition of
12 "source" specifically refers to the source as
13 defined in 302 of the Clean Air Act, and EPA has
14 published a policy in its preamble all that
15 material that helps define a source.

16 So that definition of "source," then,
17 the definition along with its meaning and
18 interpretation is carried on over into Part 70
19 in that manner.

20 Q You mentioned the Clean Air Act statute
21 itself in Part 302. Does the 50 percent cutoff
22 definition for a support facility appear in Part
23 302 in the Clean Air Act?

24 A No, it doesn't. And it wouldn't

1 ordinarily because the 50 percent comes from the
2 support --

3 Q Well, but it was a yes or no question.

4 A Sorry.

5 MR. O'BRIEN: Bear with me for a minute.

6 BY MR. O'BRIEN:

7 Q I believe you also testified that when you
8 were looking at the question of whether facilities
9 were adjacent that distance was not the only factor
10 in making that determination. Is that a fair
11 summary of your testimony?

12 A Could you state that again?

13 MR. O'BRIEN: Why don't you read the question
14 back, and I may be able to state it better. I
15 really can't remember at this point.

16 (Whereupon, the record was read
17 by the reporter as requested.)

18 THE WITNESS: I think a more accurate summary
19 would be that in determining whether we have a
20 major source -- we can talk about what I said.

21 HEARING OFFICER EDVENSON: Mr. VanMersbergen,
22 again, you just answer to the best of your
23 ability.

24 THE WITNESS: Yeah. That's close to what I

1 said.

2 BY MR. O'BRIEN:

3 Q What other factors does the agency use
4 in making the determination as to whether two
5 facilities are adjacent?

6 A Okay. When we make determinations, we
7 are trying to determine whether or not pollution
8 emitting activities are a source.

9 The regs point us -- the regs use three
10 criteria that we use, and we do not try to separate
11 -- we do not like to use the regulations to
12 separate those three criteria when the intent is
13 to try to define "common industrial grouping."

14 So there may be activity, there may be
15 relationships, that are happening at the source
16 that in one case you may have two activities
17 separate exactly by -- you may have two separate
18 activities that are five miles apart -- excuse me.

19 You may have two sources with activities
20 that are five miles apart, one source. One would
21 say these are to be included together because of
22 some of the other activities that occur, some of
23 the interdependent relationships.

24 The others that are only five miles --

1 that are five miles apart may not have the inter-
2 dependent activities, okay? So we look at other
3 activities.

4 So we use these three guidelines to try
5 to get at the main idea that the court was telling
6 us to do, and that is to get a common sense
7 definition of "source."

8 Q So, as I understand it, the three criteria
9 or certainly at least two criteria of same major
10 industrial grouping and contiguous and adjacent are
11 interrelated, they are not considered separately in
12 making what you call a common sense determination;
13 is that correct?

14 A Sometimes there can be some overlap in
15 those considerations.

16 Q And I think you testified that the
17 difference in two situations of facilities that
18 were in both instances separated by five miles
19 might be the nature of the relationship between
20 those two facilities --

21 A That is correct.

22 Q -- for making the determination as to
23 whether they are treated as separate sources,
24 correct?

1 A Whether they are treated as common sense
2 industrial groupings. Okay, fine.

3 Q And, therefore, separate sources, correct?

4 A Or the same source, right.

5 Q That's right.

6 MR. O'BRIEN: That's all the questions I have.
7 Thanks.

8 HEARING OFFICER EDVENSON: Do you have
9 redirect?

10 MR. LAYMAN: Okay. Just a few questions, and
11 then I would like to confer with my co-counsel.

12 HEARING OFFICER EDVENSON: And if you will
13 speak up for the benefit of the persons in the back
14 of the room.

15 MR. LAYMAN: Okay.

16 REDIRECT EXAMINATION

17 BY MR. LAYMAN:

18 Q Does the fact that USEPA considered the
19 proposed rail line in the General Motors' case of
20 1981 mean that USEPA's determination would have
21 been something different had the proposed rail line
22 not been proposed?

23 A No.

24 Q Isn't it likely, therefore, that USEPA

1 would have found the facilities at GM to be a
2 long-line operation even with trucking being the
3 only mode of transport or conveyance between the
4 facilities?

5 MR. O'BRIEN: I have to object to the form of
6 that question as leading and also asking for
7 speculation.

8 MR. LAYMAN: We're on redirect, and it's no
9 more speculative than half the questions that have
10 been posed today.

11 HEARING OFFICER EDVENSON: Could you rephrase
12 your question so that it's no longer a
13 hypothetical?

14 MR. LAYMAN: Yes, I can.

15 BY MR. LAYMAN:

16 Q How would you have characterized the
17 General Motors' case in terms of it fulfilling or
18 constituting a long-line operation had the facts
19 been only that trucking was the mode of transport?

20 MR. O'BRIEN: It's still a hypothetical
21 question, but --

22 MR. LAYMAN: Yes. Did you bar me from asking
23 it in hypothetical terms?

24 HEARING OFFICER EDVENSON: Yes. I asked you

1 that you not ask it as a hypothetical.

2 MR. LAYMAN: Okay. Allow me to rephrase one
3 more time.

4 HEARING OFFICER EDVENSON: Please.

5 BY MR. LAYMAN:

6 Q Is it fair to say that in the General
7 Motors' case the fact that trucking was a
8 significant mode of transport at that time made
9 that a significant factor in the determination
10 that was made?

11 A Trucking was -- a significant factor is
12 that the product was brought from one activity and
13 completed in another activity.

14 HEARING OFFICER EDVENSON: Was trucking
15 involved, Mr. VanMersbergen?

16 THE WITNESS: Trucking was involved in that
17 particular activity, okay?

18 HEARING OFFICER EDVENSON: Thank you.

19 THE WITNESS: The rail line was an alternate
20 that could have been used if trucking was not,
21 but trucking was the activity that brought the
22 subproduct to the area where it was completed.

23 BY MR. LAYMAN:

24 Q So the fact that you made reference --

1 USEPA made reference to the railroad spur was that
2 an additional factor that was made note of by USEPA
3 in its determination at that time?

4 A That's correct. Because there were other
5 determinations where a property -- a real estate
6 determination had been made via a rail line or a
7 pipeline connection, and we felt that if we put in
8 the rail connections we wouldn't be challenged as
9 much. So it was a factor related back to some
10 other earlier determinations.

11 Q Does the fact that a long-line operation
12 may not have a railroad, a rail line or some
13 pipeline facility connecting them does that always,
14 if ever, rule out the possibility that they will be
15 considered adjacent or contiguous?

16 A Could you restate that question to me?

17 Q Sure. Does the fact that a long-line
18 operation doesn't have a railroad or a pipeline
19 connecting the two does that fact alone rule out
20 the possibility that they won't be deemed adjacent
21 or contiguous?

22 A No, it does not. It just does not.

23 Q Is it possible, then, in your view that
24 a long-line operation may not be characterized so

1 much as addressing a point of common nexus as much
2 as it does maybe the nature of the relationship of
3 the business or the facility?

4 MR. O'BRIEN: Let me object. Are you asking
5 for his opinion on what he means to define a
6 long-line operation?

7 MR. LAYMAN: Generally.

8 MR. O'BRIEN: Okay. With that understanding I
9 will withdraw my objection.

10 THE WITNESS: A long-line operation where the
11 product is generated at one area and in some means
12 transported to another area is the key to our
13 making a determination. Sometimes it's helpful to
14 support determinations by putting in other factors.

15 BY MR. LAYMAN:

16 Q By "putting in" you mean addressing other
17 factors?

18 A Addressing other factors like pieces of
19 property that are touching.

20 Q Okay.

21 MR. LAYMAN: If I may confer just one moment
22 with counsel.

23 (Pause.)

24 MR. LAYMAN: I don't believe we have any

1 further questions.

2 HEARING OFFICER EDVENSON: Okay.

3 MR. O'BRIEN: Can I ask one recross question?

4 I promise that will be it.

5 HEARING OFFICER EDVENSON: That's fine.

6 Please.

7 MR. O'BRIEN: For everyone's benefit.

8 RE CROSS EXAMINATION

9 BY MR. O'BRIEN:

10 Q Mr. VanMersbergen, in response to a
11 question Mr. Layman just asked you in his redirect
12 with regard to the issue of the rail link at the GM
13 facility, I think your testimony was that in that
14 instance a property or real estate determination
15 had been made. Do I have your testimony clear on
16 that point?

17 A I don't know whether you have it clear on
18 that point. I made a reference to a real estate
19 connection.

20 Q Maybe you could explain for me just so I
21 understand it what the reference was made to the
22 real estate connection.

23 Was that referring to the GM case, or
24 was that referring to determinations that the

1 agency makes generally?

2 A We referenced the rail connection in
3 this particular situation to support our
4 determinations.

5 There were several other factors that
6 didn't even go into this letter that were involved
7 in making this determination; and we put into this
8 letter the fact that they were connected by a rail
9 to ward off any other challenges because the
10 factors that went into this determination dealt
11 with the administration within General Motors of
12 how they managed the quality of a subproduct, that
13 is the paints that go in there, how they managed
14 the production at both plants to meet a final
15 outcome. Those were the factors that we
16 considered; and we says, okay, fine, this acts as
17 one plant.

18 Q In that response listen to another
19 question. Did General Motors request that these
20 two facilities be treated as one source back in
21 1981?

22 A I cannot -- it may have been the state
23 that made this request. I'm not totally clear on
24 this. I know the state of Michigan --

1 HEARING OFFICER EDVENSON: Made what request?

2 THE WITNESS: Made the request for the
3 determination -- the request for us to make the
4 determination -- I'm a little hazy on that. I have
5 to be reminded of the situation.

6 I know that at that particular -- the
7 reason I say I think it's the state is because at
8 that particular time we were trying to get the
9 states to relate to EPA so I wouldn't have to
10 relate to every industry on making a
11 determination. So it may have come from the
12 state.

13 BY MR. O'BRIEN:

14 Q Do you remember or do you have any
15 knowledge as to whether General Motors objected
16 to the determination that had been made by the
17 USEPA?

18 A No. General Motors lived with that
19 determination.

20 MR. O'BRIEN: That's all the questions I have.

21 EXAMINATION

22 BY HEARING OFFICER EDVENSON:

23 Q Sir, I was just wondering if you could
24 speak to the real estate determination reference

1 that you made.

2 A Yes.

3 Q Why did you make that reference?

4 A We had made a -- okay, real estate.

5 People will accept without challenge if there are
6 two pieces of property that are touching each
7 other, okay? Touching each other, okay?

8 And in this particular case somebody was
9 suggesting that -- well, here's a railroad that is
10 touching both pieces of property; and we said,
11 well, okay.

12 But General Motors is the only one using
13 that railroad, so it's just functioning for General
14 Motors; and we said, well, okay, that can be --

15 Q So it was with respect to the rail line
16 reference?

17 A With respect to the rail line.

18 Q Okay.

19 A The arguments we were trying -- some
20 arguments were raised to say these are -- there is
21 no question about the adjacency or contiguousness on
22 this, okay, because there is a rail line, okay?

23 Well, okay, that's a rail line; but it's
24 owned by somebody else, and so it's not much of an

1 argument.

2 Well, it's only used by General Motors.

3 Well, okay, then the objection isn't quite
4 so severe if it's only used by General Motors.

5 It was an issue at that time, and we
6 addressed it.

7 HEARING OFFICER EDVENSON: Okay, thank you.
8 All right. I believe that that concludes the
9 respondent's case-in-chief.

10 MR. LAYMAN: Yes, it does.

11 HEARING OFFICER EDVENSON: Okay. And we did
12 discuss on one of our breaks an agreeable briefing
13 schedule, and I understand that the parties will
14 forgo closing arguments at hearing and would like
15 to brief the case.

16 MR. O'BRIEN: That's correct.

17 MR. LAYMAN: That's correct.

18 HEARING OFFICER EDVENSON: All right. The
19 agreed briefing schedule is as follows.

20 We will expect to receive the transcript
21 in the office of the board by April 23rd.

22 The petitioner's brief will be due on
23 May 8th.

24 The respondent's brief will be due on

1 May 15 with a request that a copy be provided to
2 petitioner on May 15th, and the petitioner's reply
3 brief will be due on May 20th.

4 The board's last decision date is June
5 20th as the deadline for decision is, I believe,
6 June 27th or 28th.

7 For the record, I have identified no
8 issues of witness credibility in this case; and
9 this concludes our hearing for today in the case
10 of Color Communications vs. IEPA, Case No. 96-125.

11 Thank you for your attendance and
12 cooperation in our process.

13
14
15
16
17
18
19
20
21
22
23
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)

4
5 KATHRYN L. PATTON, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct transcript of her shorthand notes so taken
11 as aforesaid, and contains the proceedings given at
12 said hearing.

13

14

_____)
Certified Shorthand Reporter

15
16

17 SUBSCRIBED AND SWORN TO
18 before me this _____ day
19 of _____ 1996.

20

21

22

Notary Public

23
24