BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOLUME V

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| IN THE MATTER OF: | ) | |
| | ) | |
| EMISSIONS REDUCTION MARKET SYSTEM ADOPTION OF 35 ILL. ADM. CODE 205 AND AMENDMENTS TO 35 ILL. ADM. CODE 106. | ) | R97-13 (RULEMAKING) |

The following is a transcript of a rulemaking hearing held in the above-entitled matter, taken stenographically by LISA H. BREITER, CSR, RPR, CRR, a notary public within and for the County of DuPage and State of Illinois before CHUCK FEINEN, Hearing Officer, at the James R. Thompson Center, 9-040, 100 West Randolph Street, Chicago, Cook County, Illinois on the 10th day of February 1997, commencing at 9:20 o'clock a.m.

APPEARANCES:

ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

MS. ELIZABETH ANN
MR. KEVIN DESHARNAIS
MS. KATHLEEN HENNESSEY
MS. MARILI MC FAWN
MR. JOSEPH YI

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS PRESENT:

MS. BONNIE SAWYER
MR. RICHARD FORBES
MR. BHARAT MATHUR
MS. SARAH DUNHAM
MR. CHRISTOPHER ROMAINE
MR. RICHARD FORBES
MR. GALE NEWTON
MR. DAVID KOLAZ

OTHER AUDIENCE MEMBERS WERE PRESENT AT THE HEARING BUT NOT LISTED ON THIS APPEARANCE PAGE.

I N D E X



E X H I B I T S:

(Discussion off the record.)

HEARING OFFICER FEINEN: Good morning. It's February 10th, not to be confused with some other dates. It's February 10th, and we're starting the ERMS hearing this morning. The agency has stated that the video conferencing which was planned for tomorrow afternoon, they would like to hold until a later date.

We had discussed off the record this morning those later dates. We have decided that March 10th and 11th starting with Dr. Caze's testimony on March 10th and along with Sarah Dunham for now -- that might change -- will happen on that day with questions filing, and we'll use the 11th as needed.

I will follow this up with a Hearing Officer order. This morning, I believe, we had scheduled to start out the morning with the testimony from design team members, and they are present here. So if there's no other matters, let's start with that.

MS. SAWYER: The agency will call its next three witnesses, Alan Jirik, Bill Compton and Steve Ziesmann.

HEARING OFFICER FEINEN: Can we have the witnesses sworn.

(Witnesses sworn.)

MS. SAWYER: Do you have any particular order you want to go in? We'll just start with Steve Ziesmann.

MR. ZIESMANN: My name is Steve Ziesmann. I am the manager of Corporate Environmental Services for Abbott Laboratories. I am testifying today on behalf of Abbott in support of the proposed Emission Reduction Market System. I have a bachelor's of science degree in chemical engineering from the University of Wisconsin, Madison, and a master of science in engineering from the University of Wisconsin at Milwaukee.

I am a licensed professional engineer in the State of Wisconsin and have been employed by Abbott Laboratories since 1992. I have been involved with the VOM trading design team since its inception several years ago. I've also participated in the Illinois Environmental Regulatory Work Group concerning this issue.

Abbott Laboratories is a global, diversified company dedicated to the discovery,

development, manufacture and marketing of health care products and services. The company is among the world's largest and most successful corporations with a presence in more than 130 countries and worldwide sales in excess of $11 billion. The company is headquartered in Lake County, Illinois, and employs more than 15,000 people at several sites in Lake County.

Abbott and many other Illinois companies initially became involved in developing a market-based trading system when the Illinois Environmental Protection Agency first proposed a nitrogen oxides trading program in 1993. When it became apparent that NOx reductions would not reduce ozone levels as effectively as VOM reductions, several industry representatives including myself agreed to participate with the agency and several other groups in an effort to develop a VOM trading program.

The result of almost three years of work by that diverse committee is before you now. I believe that the trading system that has been developed is the best practical solution to an exceedingly complex and serious problem. Abbott

Laboratories recognizes that a serious air quality problem exists in the greater Chicago area. We also recognize that in addition to other measures, substantial reductions in total VOM emissions from all sources of VOM, stationary as well as mobile and area sources, may be required to alleviate the problem.

As a major stationary source of VOM, Abbott realizes that we will be asked to reduce emissions from our facilities. What Abbott needs is the flexibility to determine where and how those reductions will be achieved. In other words, tell us what reductions are needed, give us a goal and then let us determine our best way to do it.

It should be pointed out that Abbott, as I believe many companies have, has already eliminated substantial amounts of VOM emissions through compliance with current regulatory requirements and pollution prevention efforts. The remaining VOM emissions are difficult and expensive to reduce further. I believe that the proposed ERMS rules provide the needed flexibility which will allow Abbott and

other industries to seek out the least costly sources to control and will allow the required VOM reductions to be accomplished in the most economical and reasonable method available.

Rather than speak in general terms about what Abbott sees as the benefits of this rule, I would like to present an example that I think will fairly well speak for itself. Abbott operates two major manufacturing facilities in the Chicago ozone non-attainment area. Both sites are considered major sources of VOM as defined by the Clean Air Act. At the two sites, we have five separate operating divisions and well over a thousand individual emission points, emitting a wide variety of VOMs.

We also have the ability to manufacture hundreds of different pharmaceutical and health care products at these sites. Complicating matters is the fact that many of our processes are performed on a batch basis with many of the same pieces of equipment being used for different products. This situation is quite different from a company that continually manufactures the same product on dedicated pieces

of equipment.

One of the reasons we have so many individual emission points is a result of quality control requirements. Air exhaust from multiple process emission sources cannot be manifolded together because of the potential for cross contamination of the products. Additionally, some of the exhaust streams may be incompatible with other streams thus requiring separate exhaust systems.

This is especially true where the same piece of equipment may be used to manufacture different products that may generate different air contaminants. This complex manufacturing arrangement makes it very difficult to design and efficiently operate air pollution control devices. A particular piece of equipment may be used for product A one week and product B the next. Product A may emit one kind of contaminant while product B may emit another.

Designing one air pollution control device that can handle both types of contaminants can be problematic and inefficient, if not impossible. The pharmaceutical industry is also

very sensitive to changing market conditions. For instance, if there is a particularly bad outbreak of influenza or similar virus, we may need to modify production schemes to allow the production of more antibiotics at a particular time than originally planned.

Thus, what is especially needed in our industry is a method for meeting all of our unique production and customer demands while still achieving the overall emission reduction goals required to improve air quality in the Chicago area. We believe that ERMS is that method. Abbott has performed an analysis of the costs of achieving the required emission reduction goals under both the proposed trading scheme and under a more "traditional" method.

The "traditional" method assumed that each of our five separate operating divisions would be responsible for achieving their own reductions, presumably through reasonably available control technology type controls. Since we are already subject to RACT limits, we assumed for our analysis that the emission level which triggers RACT would be lowered, and the overall

emission removal efficiency would be increased.

Looking at the types of equipment that would potentially be impacted by this type of regulation, we have estimated that the capital cost required to reduce emissions at both of our sites by 12 percent would be between 15 and 20 million dollars. This number did not take into account some of the concerns presented above or even the physical feasibility of installing controls.

For the purposes of developing this estimate, we assumed that different air streams could be manifolded together. In reality, significant precautions would have to be included to address quality control concerns, thus adding to the cost. Also, we assumed the existing building structures were capable of accommodating the physical equipment required to control emissions. By this I mean we assumed sufficient space was available for new exhaust and control equipment and that existing structures were capable of handling the increased weight of new equipment.

Again in an actual situation,

significant extra capital could be required to improve or modify existing structures. By contrast, under the ERMS we have identified several emission sources that might be able to provide the needed reductions for both of our manufacturing sites. Control devices operating at around 99 percent efficiency on these sources would cost between two and four million dollars. Because of the location of some of these particular sources, we already know that there is adequate room and structural capacity to support the control devices without major structural work or relocation of equipment.

Quality control issues are likewise not an issue because most of these sources are dedicated to a single process. Under the ERMS, Abbott would identify which sources can be controlled with the least expense and disruption to business. The cost to Abbott and to society of achieving the same level of emission reductions under the ERMS would be much less than what it may have been under a traditional command and control regime.

I would also like to stress the

importance of the market aspects of this rule. People are rightly concerned that the emission reduction requirements of the Clean Air Act have the potential to restrict or inhibit industrial growth in the Chicago non-attainment area. Pursuant to the ERMS rule, not only will industry be required to reduce actual emissions of VOM, but any future increases in emissions will have to be offset by similar emission reductions.

However, what this rule allows is the flexibility for a company to decide where it can reduce emissions and the ability to trade, that is, buy and sell emission reductions made throughout the non-attainment area. Thus, more economical emission reductions can be achieved throughout the area, and industry will have much needed options with which to comply with the overall reduction requirements.

Take the case where a particular company wanted to increase production but could not economically control the proposed increase in emissions. Provided that the emission trading market proposed under this rule develops sufficiently, this company should be able to

purchase reductions from some other source that was able to reduce emissions more economically. In this way the company is allowed to grow and become more productive.

The source that was able to reduce emissions receives an economic benefit. The environment is benefited by an overall reduction in VOM emissions, and the cost of achieving the required emission reductions is minimized. Without the benefit of this rule, the company might well have decided that it was simply too expensive to expand operations in the Chicago area due to the prohibitively high cost of controlling emissions. Thus, the local economy would have been deprived of the benefits of the company's growth.

In summary Abbott Laboratories supports the market-based approach to emission reductions reflected in the ERMS proposal. We believe that it will provide some much needed flexibility and will help the State of Illinois meet required emission reduction goals in an efficient and practical manner.

MS. SAWYER: At this time we'll proceed

with the testimony of Bill Compton.

MR. COMPTON: My name is Bill Compton. I'm a senior environmental engineer with corporate environmental affairs, corporate auditing and compliance division, Caterpillar, Inc. I've been working in the corporate environmental area of Caterpillar, Inc., for 22 years and have functioned for the last 15 as the primary environmental regulatory and legislative liaison in Illinois.

My specialty focus is in the broad area of air quality. Prior to joining Caterpillar, I was a research associate and laboratory director of the Occupational Health Studies Group, Department Environmental Sciences and Engineering, School of Public Health, University of North Carolina at Chapel Hill for two years.

Before that, I spent almost 10 years at Syracuse University Research Corporation, the last five as the manager of Air and Water Pollution Laboratory in the Life Sciences Division. I'm a member of the Illinois Environmental Protection Agency's Director's

Emission Reduction Market System Design Team.

I'm the co-chair of the Illinois Environmental Regulatory Group's Emission Reduction Market System Work Group. This group was established in 1995 to assure that regulatory language developed to implement ERMS and enabling legislation was fair and equitable to its members, participated with members and provided a forum for other business groups such as the Illinois Chamber, Illinois Manufacturer's Association, Chemical Industries Council of Illinois and the Chicagoland Chamber of Commerce.

I am here today to testify in support of the Illinois EPA proposed Emission Reduction Market System for the Chicago non-attainment area. Caterpillar, Inc., is headquartered in Peoria, Illinois. Caterpillar is the world's largest manufacturer of construction and mining equipment. Caterpillar's products range from track-type tractors to hydraulic excavators, wheel loaders, backhoe loaders, motor graders, off-highway trucks, diesel and natural gas engines and gas turbines. They are used in the construction, road building, mining, forestry,

energy, transportation and material handling industries.

Caterpillar is a Fortune 50 industry company with more than $16 billion in sales and revenues in 1995. It is one of only a handful of US companies that lead its industry while competing globally from a principally domestic base. While 75 percent of Caterpillar's assets are in the United States, more than half of its sales are to overseas customers. Exports from the United States reached a record 5.3 billion in 1995, mostly attributed to Illinois. Exports account for 17,000 Caterpillar jobs in the United States and nearly 34,000 jobs at Caterpillar suppliers in the US.

Caterpillar has two manufacturing plants located in the Chicago ozone non-attainment area. The Aurora plant is located in the Kendall County portion of the non-attainment area. The plant is primarily an assembly operation for excavators and wheel loaders with some component fabrication. Aurora employs approximately 3300 people.

The Joliet plant located in Will

County is primarily a fabrication plant of components supplied to other Caterpillar facilities. They also assemble large wheel loaders and excavators. Employment is approximately 3400 people. Both Aurora and Joliet are major sources of VOM and NOx, and therefore, covered by the proposed rule.

With these important business assets located in the Chicago ozone non-attainment area, Caterpillar over the years has been particularly sensitive to ozone regulatory and policy issues that affect our ability to operate to business plan. During the last 27 years, we have adapted to the Illinois EPA approach of developing a state implementation plan for stationary sources based on "command and control" strategies.

Throughout this time period, Caterpillar had to deal with the development of the ever-changing SIP while at the same time conducting several of the most comprehensive company-wide factory modernization programs in its history. Caterpillar both modernized and maintained existing operations in addition to

simultaneously incorporating design and operational modifications to accommodate new and revised regulations.

Fortunately, Caterpillar has been able to meet most of its business plan schedules by keeping emission increases below significance level and avoiding time-consuming new source or major modification reviews. Sufficient existing internal offsets were available to net out expected increases in emissions against contemporaneous actual decreases due to process elimination or reductions.

Knowing that eventually this approach is self limiting, we have continued to be receptive to new ideas and programs. In particular, we have been most interested in systems that provide the ability to plan changes to operations logically, yet allow facilities to do so efficiently, economically, competitively and on a timely basis.

From the stationary facility source standpoint, Caterpillar over the years has investigated the myriad of programs and policy statements designed to streamline permitting and

make growth processes easier, more efficient and flexible. Programs such as bubbling, banking, trading, economic incentives, Project XL and others have never quite functioned as conceived.

In Caterpillar's view most of these proposals offer limited opportunities for use as beneficial tools for the Aurora and Joliet facilities. From a practical viewpoint, there are no existing programs available for Caterpillar's use that provide additional facility operating flexibility and permitting process efficiencies.

From the product perspective, however, the story is different. Caterpillar has been participating in an existing USEPA market-based program. Caterpillar took an active role in the development of the Heavy Duty Engine Emissions Averaging, Banking and Trading Program in the 1987-89 time frame. This program established precedents that (1) created incentives to bring technology with lower emission rates planned for a later model year into production earlier; (2) allowed continued production of certain older model families for which there is a continued market demand; (3) is voluntary, the

manufacturer decides whether or not to participate; and (4) provides significant benefits for both the manufacturer and the environment.

Since my original testimony was prefiled, I've had an opportunity to update program participation. Of the 10 major on-highway heavy duty diesel engine manufacturers selling engines in the United States, two are not participating in the Averaging, Banking and Trading Program. The program is administered by the USEPA Engine Compliance Program Group. The program officially began in 1990. Banking began with the 1990 model year. Averaging and Trading began with the 1991 model year.

Caterpillar's experience with this program has been positive. Caterpillar's participation has been in the medium heavy and the heavy, heavy duty diesel engine categories. Participation in the particulate emission portion of the program began in 1990 and the nitrogen oxides program in 1996. We have phased out production of targeted engine series in an orderly manner, met new emissions standards for new engine series on or before deadlines, satisfied our

customers and benefited the environment by discounting and retiring credits.

To illustrate the last point concerning environmental benefits, I have attached two tables prepared by the Caterpillar Heavy Duty Diesel Averaging, Banking and Trading Program administrator. Table 1 is particulate emission credit summary as of September 23, 1996, for the years 1990 through 1996. Table 2 is a nitrogen oxide emissions credit summary of the same date. Since Caterpillar entered the nitrogen oxide program in 1996, this table represents our best estimate for this program.

Let me explain several terms in the tables. Credits are defined to be in increments of one megagram -- and by the way, I have a typo. The large M in my prefiled testimony should be lower case, which can be -- which can be translated as 1.101 tons per credit. Generated credits are those credits that must be created which, when discounted, will result in a sufficient quantity of discounted credits to cover anticipated emissions from the production of certain older models. The program has a built-in

20 percent discount which goes to the environment. Discounted credits function as the model year baseline, have a three-year lifetime and are eligible for banking. Credits used in averaging are those withdrawn from the bank for use. Credits expired are those unused credits which have been allowed to expire rather than being traded.

The particulate matter credit summary in table 1 shows that a total of 2432.2 credits were generated from 1990 to 1996. Discounting over the same time period left 1946 credits available for banking. The discount credits amounted to 486.2 credits, that is, 535.3 tons, were retired to the environment. Since not all of the banked emissions were used, 232 credits, that is, 255.4 tons, were retired from the program. The benefit to the environment during the 1990 to 1996 time period was the removal of 767.3 credits or 844.8 tons of particulate matter.

The nitrogen oxides emission credit summary in table 2 estimates generated and discounted credits for '96 and '97. Caterpillar

anticipates generating over 7,770 discount credits, that is, 8,554.8 tons, of nitrogen dioxides which would benefit the environment. One comment must be made about trading. To Caterpillar's knowledge, no trades have been made between engine manufacturers. This situation is thought to be the result of the small number of participating companies and the competitive nature of the engine business.

I have represented these details of Caterpillar's involvement in the Heavy Duty Engine Average, Banking and Trading Program as an example of an existing market-based program that provides benefit to the environment while affording flexibility. In recent years it has become painfully obvious that the present "command and control" SIP strategy for the Chicago non-attainment problem by itself is not meeting the challenge.

It seems a logical step that the Illinois EPA investigate using a market-based approach to achieve the necessary volatile organic material emissions reductions that, in combination with scheduled federal control measures, would

satisfy the three percent rate of progress requirements for 1999. The ERMS proposal addresses both ROP goals and proposes a new emission reduction marketing system to provide an additional mechanism for VOM reduction.

ERMS will not resolve all of the ozone non-attainment problems in the Chicago area. In fact, additional reductions may be required from mobile and area sources. ERMS should, however, go a long way toward establishing a market-based system designed to provide: (1) an additional alternate means to meet VOM reduction goals; (2) a system that provides users with the ability to plan changes to operations logically and allows facilities to do so efficiently, economically, competitively, and on a timely basis; and (3) a system that provides the means to meet air quality goals without placing an inequitable burden on stationary sources as a category.

From Caterpillar's experience with the market-based Heavy Duty Engine Emissions Averaging, Banking and Trading Program and participation on the ERMS design team leads us to

believe that the IEPA's proposed Emission Reduction Market System is directionally sound. It's a step toward providing an additional degree of flexibility that existing regulatories do not yet provide for stationary sources. If ERMS is provided with policy, legislative and regulatory restraint, it may prove itself workable. It should provide a large number of existing sources with an additional mechanism to use to maintain compliance. It should be a welcome supplement to meet ozone air quality goals and satisfy the stationary source contribution to VOM reductions.

MS. SAWYER: Thank you, Mr. Compton. Mr. Jirik.

MR. JIRIK: Yes, good morning. My name is Alan Jirik. I am the director of regulatory affairs for Corn Products, a division of CPC International, Inc. My principal responsibility is environmental management and compliance for the North American operations of the corn wet milling division of CPC. My specialty is in the area of air quality management. Previous to joining Corn Products, I was a consultant directing the air quality services group of Versar's midwest

regional office. I began work in the air quality field in the late 1970s, a period that spans most of the historic RACT proceedings that have occurred before this board.

I'm a member of the design team that drafted the ERMS program that is the subject of today's hearing. I am also a member of the Air and Waste Management Association, serve as the vice chair of the industrial water, waste and sewage group and am a certfied hazardous materials manager. I would like to add a note not in my prepared testimony that I also served as the co-chair of the ERG work group that reviewed and critiqued this proposed regulation. By way of background, ERG is an affiliate of the Illinois State Chamber of Commerce.

I earned my masters degree from the University of Illinois at Chicago with an undergraduate degree from Northern Illinois University. CPC is a Fortune 500 company with operations in over 63 countries worldwide. CPC operates a number of facilities in the Chicago area ranging from the large Corn Products Argo plant to small food service operations. Our

products include well-known brands such as Mazzola corn oil, Argo corn starch, Entenmann's bakery products, Skippy peanut butter and Knorr soups. CPC employs approximately 1,000 people in the non-attainment area.

As a member of the design team, I was able to provide several different perspectives for the benefit of the group. CPC has both large and small operations in the Chicago area. In my previous experience as a consultant, I dealt with a wide variety of matters for a wide range of industries. I attempted to bring this diversity to the table during our discussions.

The Chicago area is non-attainment for ozone. The program mandated by the federal government for cities in this condition can be simply stated; implement controls to reduce emissions to achieve the air quality standards. Implementing this simple intent has proven difficult. Reductions on point source emissions have been historically achieved through traditional RACT. At this time the availability of additional RACT control measures are extremely limited, and the cost effectiveness of continuing

this regulatory approach is in question. To do nothing is not an option as USEPA promulgation of a Federal Implementation Plan is the ultimate backstop.

Given these circumstances, I believe that the IEPA has chosen a proper time to bring forward a proposal which from CPCs perspective provides a more cost effective program to generate the emissions reductions mandated by the federal government. The fact that this program achieves the environmental benefit at reduced cost is a significant plus for the ERMS program being proposed today.

Traditional RACT rules do not provide the incentive inherent in a free market system. A condition of "imperfect knowledge" can also occur in traditional RACT leading to greater cost for equivalent environmental benefit. While technology forcing has always been a concept of clean air legislation, it is often hamstrung by the regulatory process. Innovation is not encouraged or fostered under a strict command and control structure.

Under ERMS, there is a much higher

likelihood that the lowest cost reductions will be identified since industry now has an economic incentive to maximize reductions. Strategies can be tried, improved or even discarded as knowledge of performance is developed. Under prescriptive traditional RACT, this flexibility is not available. Under RACT, a minor transgression of a limit is a punishable offense. Industry desires and strides diligently to be in compliance at all times. This leads industry to seek secure emission limits that can be reliably and confidently complied with at all times. Innovation is therefore discouraged. Traditional RACT naturally generates concern in industry regarding the setting of overly optimistic limits and excessive worry over "what if" scenarios.

ERMS provides a more comfortable opportunity to permit "closer to the edge," that is, accept a lower limit, knowing that a shortfall can be made up from the market. Additionally, over performance can be rewarded by the market. This allows greater flexibility in the standard setting process not available under RACT. More importantly, ERMS provides a reward or incentive

for over-compliance that is absent under today's traditional RACT system.

Regarding toxic hot spots, the constraints provided by current toxic control programs are not circumvented by the ERMS. Therefore, ERMS does not facilitate the formation of any new accumulations of emissions. Quite the contrary, each participating source under the ERMS will be accountable for its actual emissions and needs to have additional ATUs for increases in seasonal emissions above its allocation. As a result, the ERMS will provide an economic disincentive against hot spot formation not present under today's regulations.

Similarly, ERMS provides an assurance against air shed degradation over traditional command and control. Under a rate-based RACT standard, actual emissions can increase due to increased production. Under the air shed cap of ERMS, these increases are not possible. Furthermore, the 1.3 to 1 reduction of actual emissions versus future allowable emissions required for new sources under Title I of the Clean Air Act Amendments remain in place which

should fully respond to concerns regarding air shed degradation.

In my many years of experience in this profession, I have observed that industry performs best when allowed the freedom to innovate, a founding principle of our system of government. Innovation is critically needed for Chicago to achieve the ozone standard. This freedom is not possible under traditional RACT. It is my opinion that both the people and the industries of Chicago would be well served by the adoption of the proposed ERMS rule.

MS. SAWYER: Thank you, Mr. Jirik. At this time we can take any questions for these witnesses.

HEARING OFFICER FEINEN: Before we do that, since the witnesses read in the testimony, I don't think we'll enter them as -- their testimony as exhibits.

MS. SAWYER: Okay.

HEARING OFFICER FEINEN: However, for Mr. Compton, I would like to do that because of the tables that were included.

MS. SAWYER: Were your tables provided?

MR. COMPTON: They were.

HEARING OFFICER FEINEN: They were. So I'd like that attached to the transcript so everyone has the tables and the testimony together.

MS. SAWYER: I would like to enter the testimony of Bill Compton for the record.

(Document marked.)

HEARING OFFICER FEINEN: I'm marking that Exhibit No. 46, the testimony of Bill Compton that was prefiled and was dated January 13th, 1997, which includes tables 1 and 2. If there's no objections, we'll have that entered into the record. Seeing none, I will enter that into the record.

(Exhibit No. 46 was entered into evidence.)

HEARING OFFICER FEINEN: Now, you can proceed with questioning, if there are any questions.

MR. TREPANIER: I have a question for Mr. Ziesmann.

HEARING OFFICER FEINEN: Could you speak up.

MR. TREPANIER: Yes. I have a question for Mr. Ziesmann. In your testimony as you read it as it occurred on page 5, you mentioned that there were -- that you had identified several emission sources that could provide needed reductions that could result in a 99 percent efficiency at those sources with a cost between two and four million dollars. Who are those sources?

MR. ZIESMANN: There are several sources. I don't know the particulars. The control device would be a thermal oxidizer.

MR. TREPANIER: What's the type of source?

MR. ZIESMANN: They are pharmaceutical production tablet manufacturing sources.

MR. TREPANIER: Then your testimony continued, and you spoke about when you were stressing the importance of this rule, and you spoke that industry would be required to reduce actual emissions, and future emissions will have to be offset by similar emission reductions.

When you say similar emissions reduction, are you meaning that the emission

reductions would be of the same reactivity or toxicity? Is that your understanding of the rule?

MR. ZIESMANN: That is not what I had meant when I put that in there. When I said similar, I meant in terms of volume or amount.

MR. TREPANIER: Then in the next paragraph -- as you read your testimony, the next paragraph appeared that when a company would grow and be more productive and it was able to reduce their emissions and receive an economic benefit, that the environment would be benefited by overall VOM emissions.

How is it that you understand a corporation could receive an economic benefit from reducing their pollution while the environment would also receive a benefit? How will that occur?

MR. ZIESMANN: What I was trying to point out is when a trade occurs, the company that made the reductions, the excess reductions receives some economic benefit from a company that has purchased those reductions and the overall reductions throughout the air shed have been met.

In other words, if everyone meets the 12 percent, then the environment sees a benefit.

MR. TREPANIER: Now, was your testimony then incorrect when your testimony was that a company would be allowed to grow and that in that case as a company is growing, that -- I understand your testimony was that the company was going to grow, somebody else is reducing their emissions receives an economic benefit and the environment is benefited?

MR. ZIESMANN: Correct.

MR. TREPANIER: How will that occur?

MR. ZIESMANN: Because the overall reduction goals of the rule will be met. So the entire air shed is seeing a reduction in VOM emissions regardless of that increase in production at the particular plan.

MR. TREPANIER: So I understand then that your testimony is that the benefit to the environment will come when the reduction in VOMs is commanded?

MR. ZIESMANN: I'm not sure what you mean by commanded, but through this rule, the overall reduction from industry, that's where the

environmental benefit comes from.

MR. TREPANIER: Now, your testimony -- and at the same place the paragraph starts, take the case where a particular company wanted to increase production.

MR. ZIESMANN: Yes.

MR. TREPANIER: Now, in that instance where a company is increasing production, how is the environment going to receive a benefit?

MR. ZIESMANN: The company would not be able to increase their production unless they were able to purchase reductions or generate their own reductions that would offset the increase in emissions.

MR. TREPANIER: Now, if the emissions are merely offset, where is the benefit to the environment derived?

MR. ZIESMANN: Because under this rule, there's an overall reduction in emissions. So the companies have to meet those overall reductions in addition to offsetting any increase.

MS. MC FAWN: Are you referring to the 12 percent reduction?

MR. ZIESMANN: Yes.

MR. TREPANIER: At Abbott Labs, what's the variation year to year on your VOM emissions?

MR. ZIESMANN: I can't answer that. I don't have that information.

MR. TREPANIER: Do you know when Abbott Labs -- under this program that you studied for several years and helped design, do you know when Abbott Labs selects their baseline if they're going to be able to use one of the three most recent years to select their baseline from?

MR. ZIESMANN: I know they are currently looking at that. All the different operating divisions are meeting and determining what those baselines would be. So I can't answer that at this moment.

MR. TREPANIER: Is it fair to say that you don't know what Abbott Lab's baseline would be?

MR. ZIESMANN: In terms of actual numbers or in terms of the year?

MR. TREPANIER: In the years.

MR. ZIESMANN: I do not know that at this point.

MR. TREPANIER: Do you know in this

program -- I understand there is an exception for an unusual year. If in the past few years that are offered to select two of the three, if an unusual year, I understand, occurred in that time, a corporation could select a year of going back as far as 1990?

MR. ZIESMANN: Yes.

MR. TREPANIER: Do you know how that exception developed?

MR. ZIESMANN: I'm not sure I understand your question.

MR. TREPANIER: The purpose. What was the purpose of that?

MR. ZIESMANN: This may be a question that the agency --

MS. SAWYER: I think that is, and we did present testimony on that. You would be better asking that question to Chris Romaine.

HEARING OFFICER FEINEN: Why don't we ask it this way. As a design team member, do you know why that section was put in or if any discussions took place about that section?

MR. ZIESMANN: Yes. In my opinion or my understanding of it, that is to address any cyclic

economic upturns or downturns from a particular company.

MR. TREPANIER: Has Abbott Labs experienced that? Does Abbott Labs fall within that circumstance?

MR. ZIESMANN: I don't think so, although as I mentioned, we have several different operating divisions who have their own budgets or their own markets, and within any of those operating divisions, they may have had up or down years. So it's difficult to say as an overall company what our base year will be.

MR. TREPANIER: I appreciate you addressing my question. In this matter of the program addressing the cyclic emitters, goes with a history of cyclic emissions -- I'm sorry, I've forgotten the question. That's all my questions. Thank you.

HEARING OFFICER FEINEN: Let's point out that we do have a new court reporter today, and her name is Lisa. If you could state your name before you actually question so she can get the names and faces, that would probably help her out.

Are there any questions for the panel?

MR. TREPANIER: If I could, I did just recall. In addressing the cyclic emitters, is it your understanding that a corporation, a polluter, that has up and down in their economics, as you said, you know, a good year, you know, maybe they had a good year in '92, maybe they had a poor year in '95, is it your understanding then that they could substitute '92 for '95?

MR. ZIESMANN: It is my understanding. I'm not sure what the showing they would have to make in order to do that, but I believe that's what the purpose of that provision is for.

MR. TREPANIER: Do you think that other corporations are going to be able to discern what showing is going to be required from them if in this case you on the design team don't have that information?

MR. ZIESMANN: Well --

MS. SAWYER: Objection, that's speculative.

HEARING OFFICER FEINEN: Is there another way you can phrase the question?

MR. TREPANIER: Do you know -- is there something in the rule that you helped to design that gives an indication to those who are potentially affected by the rule of what showing they're going to need to make to -- or you know, what indication is there in the rule to an emitter to let them know when it's going to be okay for them to substitute an out year?

MS. SAWYER: I think that this question would be better asked of the agency's witnesses. If you want to just speak to your understanding, that's fine, Steve, but really the question would be better answered by an agency witness.

MR. TREPANIER: If I could, I'll preface it in your understanding, if that will make the question answerable.

HEARING OFFICER FEINEN: He's asking a design team member, not as the agency.

MS. SAWYER: I just wanted to point out that I think you would get your better answer asking that of the agency.

MR. ZIESMANN: It's my understanding that those types of showings will be almost a case-by-case incidence in what it would take to

prove up and an outlying year.

MR. TREPANIER: So as far as you know, there's not something in this rule that's telling the people, the emitters?

MR. ZIESMANN: The provision establishes the ability to use those outlying years. I'm not sure beyond that what it says exactly an industry would have to do to show that.

MR. TREPANIER: Thank you.

HEARING OFFICER FEINEN: There's a question over here.

MR. SAINES: Rick Saines, S-A-I-N-E-S, for the ERMS Coalition. Good morning. My first question really is for each individual panel member. I guess we can start with Mr. Jirik and go to Mr. Compton and Mr. Ziesmann.

In addition to the prefiled testimony, could each of you just describe more fully what your role was as part of the design team and what specifically you did to contribute to the rule?

MR. JIRIK: I guess I'll start. As I stated in my testimony, what I attempted to bring to the table was a very wide range of experience,

having practiced in the Chicago area in a variety of job functions, to provide really the best possible outcome for the Chicago area. Actually I made a conscious effort not to represent a CPC position, somewhat purposefully, and if not, made a hard determination of the numerical outcome.

Basically understanding that if we're doing RACT, we're doing something very prescriptive, and the worst you're going to do under this rule is the same thing you're going to do under RACT. So I tried to bring an objectivity and a diversity of experience to the table for the benefit of the group from an industry perspective, what is concerning us, what experience we have had dealing with regulations in the attempt to craft a well-founded, cost effective rule that would achieve what the feds are requiring of us.

MR. COMPTON: Would you restate the question, please.

MR. SAINES: Yes. I'm just asking what each individual member has contributed to the rule specifically in terms of their input into designing the rule.

MR. COMPTON: Well, from my perspective,

I addressed that in my testimony. There are two things. I was asked if I would like to participate, and I said, why not. I've been at the environmental game now, if you want to call it a game, for 33 years. I've been involved in almost all types of regulatory activities within the State of Illinois for my employment with Caterpillar. I work for a company who is involved in an existing trading and banking program that works.

I think that with that perspective and having some insight on how that program works, that there are parallels there that could be used during the development of the design program. So as a result, I felt that both the company and myself had something to offer in putting the design team proposal together.

MR. ZIESMANN: I guess my input was to try and bring Abbott's perspective to the rule from the standpoint of Abbott's somewhat unusual production process. All of our production is on a batch basis. We're not a continual manufacturer that is running an assembly line.

We run a lot of different products

on different pieces of equipment for differing, varying lengths of time. So it was important to Abbott to make sure that whatever rule was developed would address our concerns from that standpoint.

MS. SAWYER: Can I ask just a follow-up question on this line, and whoever wants to answer it, that's okay. Essentially when you worked with the agency on the design team, you actually helped review copies of the proposed rule and gave input on specifics on the proposed rule. Could someone possibly expand on that process.

MR. JIRIK: We participated in the review function looking at any number of drafts. There were very detailed discussions around the table from a variety of perspectives, as some of the other references were to economics and environmental and EPA.

I think what I saw -- and I will do a broad characterization. What I saw the industry sector bringing was some of the reality of trying to run a plant, trying to manufacture things, put them in commerce and how do rules affect that. How does one really go about implementing rules

that are going to be fairly stringent and in the real world environment? And I saw that we had good discussions in that area. One can craft words with unintended consequences. I think we tried to look at the implementation stage from an industrial standpoint to say, now, what does this really mean and how would one really go about doing this?

MR. COMPTON: One observation I had about the functioning of the design team that as we proceeded -- and Al said that we were very open in our discussions primarily because we couldn't have accomplished anything if we didn't establish a dialogue, but one thing that I really recognize was the respect for the integrity of all the points of view that were being expressed around the table, and we would discuss these things and argue them out -- not argument, argument, but understanding argument -- until we felt that we had come to a resolution or a consensus.

In some cases we would leave an argument and come back to it six or seven months later to address it again if everyone didn't quite feel comfortable that their position was

understood. So from my perspective, I think that we were individually able to maintain the integrity of viewpoints as we went through this process.

MR. SAINES: Just another follow-up. I guess it's the same sort of format. I guess we can start with Mr. Jirik and go on down the line. As members of the design team when you were working with the agency in developing the rule, what were your positions or what is your current understanding rather of the proportionate share aspect of the rule?

In other words, what is your understanding of how the rule is going to affect stationary sources after 1999 in terms of the proportionate share issue?

MS. SAWYER: Objection. I'm not sure I understand this question. You're asking them how the rule is going to affect sources after 1999?

MR. SAINES: This related to the proportionate share issue in that the rule is supposed to assure that stationary sources will not be affected greater than their proportionate share.

My question goes to members of the design team as they were creating this rule what their understanding was as to how stationary sources are going to be affected after 1999 because we heard testimony that there will in fact probably be additional reductions that are going to be needed.

MS. SAWYER: This isn't about their testimony then?

MR. SAINES: This is about their understanding of the rules as members of the design team.

MS. SAWYER: The rules that go to 1999? I thought the question was about beyond 1999.

MR. SAINES: The rules state that there may be further reductions needed, and the rules, also the statute, mandates that the rules assure that stationary sources do not get affected beyond their proportionate share. So it's the rule as it's being promulgated that we're interested in.

MS. SAWYER: Your question relates to air quality policy that the agency develops. They were involved in developing some of the underlying principles of the rule, but in terms of the air

quality stuff, that's really an agency question.

MS. MC FAWN: Maybe I can help out here. I have a question, and it might be relevant at this point. Mr. Compton, you testified that you found that the ERMS should provide a system that provides the means to meet air quality goals without placing inequitable burden on stationary sources as a category, and I was going to ask you to elaborate on that a little bit. Maybe that will address your point.

MR. SAINES: That in fact will. Thank you.

MS. MC FAWN: If you can, Mr. Compton.

MR. COMPTON: Up to a point. I can address the category issues because Caterpillar is affected from a proportionate share issue in several instances, primarily from an engine emission or a mobile emission source. So I can look at proportionate share as Caterpillar meeting its goals twice through this process.

Hard to put a number on the engine emission reduction size which is a federally mandated program, but if I look at my table here, I'll find probably that for the particulate

standpoint and a projected NOx standpoint that we are doing our share in the Chicago area, if I could apportion the number of engines that are either sold or operated in this particular area.

If I take a look at it and try to address Board Member McFawn's question from a category standpoint, there are maybe only so much that some particular sources can do in order to easily or let's say meet their emission limits and yet have an economic goal or cut toward the end where they can actually do something within -- without an inordinate cost.

I think that a lot of the smaller companies in this particular viewpoint as a category would probably have some relief in an emission trading program that would balance a small number of credits that they may have to obtain versus the large expense that they may incur, something similar to what Mr. Ziesmann was talking about. I will answer, just based on what I saw happening during the design team, that we listened with great interest the information that was provided on the different source categories for mobile area and the stationary.

I don't think that we came to any understanding during that particular phase of apportionment. We accepted the apportionment as it was presented to us knowing that that would be worked out during the regulatory language process which is what we have going on today. So I'm not so certain that I could really address what the fairness of an apportionment would be except to say that when we focused on stationary sources that they were being treated fairly from a procedural standpoint and from an administrative standpoint.

MR. SAINES: Let me just make sure I understand your answer. So you're saying that at the time that the rule was being promulgated and you guys were each putting in your inputs and creating the draft that we have before us, the issue of proportionate share was not finalized? It was not clear between --

MR. COMPTON: Based on my remembrance and the proportionate share issue, I think, was one that was waged in the legislation.

MR. JIRIK: May I?

MR. COMPTON: Yes, go ahead.

MR. JIRIK: If I can further, proportionate share in my understanding is something between the three sectors. All three sectors are accomplishing things, have accomplished things and will accomplish things. The final program, as testified to by others, is yet to be determined, and it's my understanding that proportionate share will be determined in the final program to achieve attainment.

The fact that this stops in 1999 at 12 percent does not require in my personal view the discussion of proportionate. Proportionate was more relevant when this was an unending leverage down to achieve attainment, and that was the basis of the original legislation. When this rule changed to a stop point three years out mandating another board proceeding before anything further occurs, in my view guaranteed proportionate share making it a moot issue.

MR. SAINES: Again if I could just make sure I understand your answer then. You're saying that you think the proportionate share will be the issue in 1999 after this rule has come to an end or the three-year period has lapsed, and if

necessary, further reductions are needed, your understanding is that will be the point at which proportionate share will be addressed?

MR. JIRIK: My understanding is that was the intent of the insertion of that language into the legislation, that you are stating a legislative intent very accurately.

MR. SAINES: Thank you.

HEARING OFFICER FEINEN: Further questions?

MR. NEWCOMB: This is Christopher Newcomb, N-E-W-C-O-M-B.

Was the design team involved in drafting the best available technology exclusion?

HEARING OFFICER FEINEN: You might have a section number for that?

MR. NEWCOMB: That's 205.405.

MR. JIRIK: Well, it was the subject -- if I may, it was the subject of discussion between the team and the agency. Much of the technical work, however, was conducted by the agency, and I think it would be proper to refer the question to them. So we did discuss it. We did communicate concepts, issues, particularly from our

perspective, of items the agency would want to consider technically, but again, if you're interested in the nuts and bolts of how that came to be, you would have to refer it to the agency.

MR. NEWCOMB: My questions would, if I continue them, be actually more directed to as the industrial sector representatives on the design team, were there individual companies interested in providing through these rules an exclusion based on best available technology for certain sources that may be finally affected by the rule?

MS. SAWYER: Could you clarify that a little bit more.

MR. NEWCOMB: Were the individual companies that you each worked for possibly interested in having exclusions available for certain sources and that exclusion would have been based on best available technology?

MS. SAWYER: Are you asking --

MR. NEWCOMB: I'm asking them each individually. Is there something complicated about that?

MS. SAWYER: Yeah. I guess I'm looking for clarification. Are you asking whether they

cared -- whether their concern was as an individual company seeking a BAT exemption or whether they wanted it in there as a concept for companies in general to take advantage of?

MR. NEWCOMB: Clearly their involvement in the design team was not for their individual companies. They're doing this on a -- for participating in public forum. So no, I wouldn't be expecting them to answer for their individual companies.

MS. SAWYER: I just wanted to clarify. Do you understand?

MR. JIRIK: If you go first.

MR. ZIESMANN: I guess I'm a little unclear as to what you're asking, but we did discuss the concept of having exclusions through BAT. Did we actually participate in writing those rules? No. We reviewed them after the agency had drafted them, but I don't think any of us were involved in drafting of the language, if that is your question.

MR. NEWCOMB: I guess that answers part of my question. Would you have any comment then on what you saw the intent of the BAT exclusion to

be?

MR. ZIESMANN: Could you expand on that. What we saw as the intent of the exclusion?

MR. NEWCOMB: Right.

MR. ZIESMANN: My understanding of the intent of that exclusion is for certain sources that cannot practically reduce emissions from those particular sources.

HEARING OFFICER FEINEN: Are there any other questions?

MR. TREPANIER: I want to follow up the agency's question to Mr. Jirik. You had said that around the table -- what I understood you said, around the table there was all the viewpoints or many viewpoints were brought to that table including the environmental. How was that seat filled?

MR. JIRIK: EDF.

MR. TREPANIER: Was there another environmental voice at the table?

MR. JIRIK: I think everyone has an environmental conscience and spoke with that regard. In terms of a nationally known group, I

was not aware of any.

MR. TREPANIER: Any local groups?

MR. JIRIK: I did understand that there were discussions with local groups, but I --

MR. TREPANIER: At the table, I'm speaking. When you say on the design team, is what you're saying EDF had brought the environmental perspective?

MS. SAWYER: I think we've answered this question on numerous occasions.

HEARING OFFICER FEINEN: If you can answer it to the best of your knowledge, then that's how he can answer it. I don't know if he can answer beyond what he's already answered.

MR. TREPANIER: I think I have gotten the answer. Thank you.

HEARING OFFICER FEINEN: Any other questions? Any questions from the board?

MS. MC FAWN: Maybe the record contains this information, but it doesn't come to mind. Who else were members of the design team outside of the agency?

MS. SAWYER: We did -- I think Mr. Kanerva did explain that, but --

MS. MC FAWN: These three gentlemen and who else?

MR. COMPTON: From EDF there were two. You want industry?

HEARING OFFICER FEINEN: Everybody.

MR. COMPTON: Everybody.

MS. MC FAWN: Well, the three of you, the agency and who else?

MR. COMPTON: There was the other industry business representative was Bob Ermundson (phonetic) from Amoco. From EDF there was --

MR. JIRIK: Edison.

MR. COMPTON: There was Commonwealth Edison by Bob McLochlan (phonetic). From EDF Joe Goffman and Nan Dudik, who is an economist. There was a consultant to the agency to the design team by the name of John Calcagny (phonetic). Then there was Paul Bellevue, and they were represented by Phil O'Connor, Kay O'Case (phonetic) and Jerry -- help me out here, Alan -- Keenan. Let's see.

MS. MC FAWN: Who is Mr. Keenan with?

MR. COMPTON: Mr. Keenan is an economist with Palmer Bellevue, and generally the EPA staff.

MS. MC FAWN: Thank you.

MR. SAINES: Mr. Jirik, you did testify that CPC has a number of large and small sources potentially affected by the ERMS rules. As representatives of industry, did you consider your small sources to be representative of the rest of the potentially affected sources that are somewhere in the, you know, 10 to 15 to 20 ton per season range? Because I think from the testimony it's clear that the three -- you three individuals represent rather large industrial organizations. So I guess my question is do you think there was a fair representation of some of the smaller sources that are going to be potentially affected by these rules on the design team?

MR. JIRIK: CPC does have some smaller operations in the area. As my testimony stated, I also worked for a number of those as a consultant prior to coming to CPC. And again, as I noted in my testimony, I tried to function as a resource, not as a big company representative bringing forth -- maintaining confidentialities but bringing forth the wealth of experience dealing with the tiniest of operations to things that are very huge

and bring an objective resource to the table to the benefit of the process. So I did not attempt to forward personal or individual items, but rather represent what I have obtained through personal experience as a wide range of experience, both large and small.

MR. COMPTON: When I went through the design team report with the tables that are presented in the back, this is generally what I was looking for. I found -- and I'll just give you what I recall right off the top of my head. For our Joliet facility, we probably are in the down, I would say, 30 percent from the bottom of the list.

There are a large number for Aurora. We are probably somewhere around 50 percent down in the list. For me, this represents medium to small, and I think that Mr. Kanerva had pointed that out in his testimony how many hearings ago. So even though we may be a large industry, our total emissions from the affected sources are medium to small.

MR. SAINES: Thank you. Would you like to comment, Mr. Ziesmann?

MR. ZIESMANN: No, I have nothing to add to that.

HEARING OFFICER FEINEN: I have a question, and I don't know if all three of you can answer it, but I was hoping at least Mr. Ziesmann and Mr. Compton can answer it. If you were thinking of bringing a new source into the non-attainment area for Abbott Labs or Caterpillar -- and I don't know if Mr. Jirik can deal with a fictional company, answer this question, too -- how do you see the ERMS proposal working with new source review and the advantages of ERMS or disadvantages of ERMS?

MR. ZIESMANN: Well, I believe that Chris Romaine has talked about the new source review provisions. What we would see the advantage is is that it creates a market for available offsets and the ability to trade for those more readily or bring in a new source.

MR. COMPTON: From my viewpoint, if I had a major modification which I would consider for each of these plans, I would look at new source review initially as a step in itself to determine whether or not it would be possible to

do what we wanted to do, especially in finding the offsets at 3.-- at 1.3 to 1.

Then I would determine whether or not -- and maybe not in this order, but I would determine whether or not LAER would be reasonable and whether or not economically we would even want to pursue new source review for a particular type of modification. So before I would integrate it with the ERMS type of proposal, I would want to make very sure that I wanted to pursue new source review on those locations right from the beginning.

MR. JIRIK: I'll take a try at the question. From today's perspective, absent this rule, we have Title I mandating 1.3 to 1 offsets. The offsets are being driven by a LAER process. We do not have a lot of market information. We do not have the freedom and the innovation which I testified to. It's very difficult to go out and about and identify where you get these. So today it is a fairly difficult proposition. Plus the generation of the necessary reductions to the air shed are not being done in the most economical way.

So we have a disincentive to the employment base of Chicago because we are not attainment. To the extent that is magnified by additional cost inefficiencies under command and control, you have a further negative to the overall economy. Some of the positives you might see under an ERMS program is greater market information, greater stimulation of the innovation that would attempt to generate reductions through new and improved technologies, and at worst, you're going to be where you were, but you have a tremendous upside to be better off. So you're generating comparable environmental benefit at a reduced cost to the benefit of the economy in the Chicago region, if all of the economics and the fundamentals of the market are as the economists have led me to believe were made.

HEARING OFFICER FEINEN: Any follow-up questions? Any further questions? Then we'll take a 10-minute break at this point, and we'll start in with questions after break.

(Recess taken.)

(Discussion off the record.)

HEARING OFFICER FEINEN: We want to

start this morning out with going through questioning starting out with Tenneco. The agency has prepared a table of contents which has been passed out to most people in the audience. There's more copies on the back of the table.

At the end of a question, if we feel the need, we will move it into the record as an exhibit. Please state the question that you're asking as we go through so we can keep the record clear, and let's begin with the Tenneco questions.

MR. FORCADE: Good morning. My name is Bill Forcade from Jenner & Block representing Clinical Plastics Company. With me today is Mr. James Wakeman from Clinical Plastics. We will be asking questions from the prefiled questions we submitted on January 27th, 1997.

According to the table of contents circulated by the agency, we will move first to subpart A, general provisions, Section 205.130, definitions.

Question 1, does the definition of "emission unit" in 35 Illinois Administrative Code 211.1950 apply to the ERMS proceeding?

MR. ROMAINE: Yes, it does.

MR. FORCADE: Question No. 2, will the agency add a definition for "emissions reduction generator" to this section?

MR. ROMAINE: We are not planning to add such a definition. We believe the provisions for emission reduction generators are adequately described in Section 205.480.

MR. FORCADE: I believe now we're going to Section 205.150, emissions management periods. Question No. 3, if a new source wants to locate in the Chicago ozone non-attainment area and no allotment trading units are available for purchase on the market or in the new source portion of the alternative compliance market account, what options are available to this facility?

MR. ROMAINE: I think I first want to clarify. Are we talking here about a new participating source that would potentially have 10 tons of VOC emissions and is required to get a CAAPP permit?

MR. FORCADE: Yes.

MR. ROMAINE: That's important because sources that are not minor could come into the area without having to participate in the trading

program. If a source -- a new participating source of this type initially can't find ATUs, it basically has to look harder. The other things that this does have available to it, it can also go to look for reductions from emission reduction generators or consider inner sector reductions.

I think it's important to remember that this is really a situation that a new major source coming into the area at this point is subject to. A new major source is one with 25 tons per year. That's equivalent to 10 tons per season. Under the new source review rules, those new sources that come into the area have to offset their emissions.

If those sources aren't able initially to find offsets, then they have to look harder. They don't really have the option under our new source review rules to actually be effective through the ERG and inner sector process. That's another option that's available through the trading program. More importantly, the trading program does create a commodity for ATUs and creates this marketplace that will certainly, we believe, facilitate satisfying the

offset requirement for a major new source.

MR. FORCADE: Is it true that a new participating facility that is not able to acquire ATUs will not be allowed to locate in the Chicago ozone non-attainment area?

MR. ROMAINE: That's correct. At present if you have a new major source coming into an area that can't have the necessary offsets to do what's necessary to obtain those offsets, it will not get a construction permit.

MR. FORCADE: If there are no ATUs available for purchase on the market or in the new source portion of the ACMA over the 10-year period, is it true that no new major emission sources of VOM will be allowed to locate and operate in the Chicago ozone non-attainment area?

MR. ROMAINE: I'm not sure what the significance of the 10-year period is. You're really asking me to speculate about a situation that I don't believe will occur. As I've said, I think the trading program will make the situation much better for proposed new major sources because ATU will be a defined commodity, and a market will exist for such proposed sources to look for ATU

credits.

HEARING OFFICER FEINEN: At this point we're going to switch over to questions from Dart Container, questions 19 and 20, 21, 22 and 23, if Mr. Newcomb feels necessary to ask those questions.

MR. NEWCOMB: This is Christopher Newcomb for Dart Container. I have with me today Michael Powell, also from Dart Container. It's my view that question 19 and question 20 have already been answered as well as 21. Therefore, I'm not going to ask them.

However, question No. 22, if a source wishes to increase its production and emissions by an amount that would trigger new source review, in other words, the source will make a major modification, and the source can obtain sufficient ATUs from the market or from closing another participating source and meeting the offset requirements, why should the source still be required to demonstrate it will implement technology meeting the LAER standard?

MR. ROMAINE: The requirements of new source review are established by the Clean Air

Act. The Clean Air Act provides that new major sources must generally both meet a LAER requirement and provide offsets. It's not an either/or situation. It begins with internal offsets. It begins with sources in this case where they're going out to the marketplace to get their offsets or ATUs, they have to meet both requirements.

MR. NEWCOMB: Question No. 23, wouldn't the agency benefit from not requiring LAER, which is L-A-E-R, under the above scenario since the source will still be subject to further emissions reductions and LAER would exempt the source from further reductions?

MR. ROMAINE: I think there are a couple of points. First of all, the agency doesn't get any particular benefit. The benefit here we're talking about is the benefit to the air quality of the State of Illinois, and I guess I'm trying to think about the scenario that you're talking about. In some respects, however it works out, as I said, is irrelevant because the Clean Air Act, the Congress has said this is the way it's supposed to be, but your suggestion is there is to

be a circumstance where LAER would exempt a source from further reductions, and that's presuming that the source has already been subject to LAER at the time the baseline has been determined.

If the baseline has already been determined, the LAER requirement doesn't really affect any provision for further reductions. The further reductions would in fact come through the offset requirement, and LAER would provide whatever it would provide in terms of providing very good control for the particular new project, particular unit that is the subject of the major modification or the new major source.

HEARING OFFICER FEINEN: Thank you. According to the agency's outline under subpart A, general provisions, Section 205.150, emissions management periods, Mr. Trepanier has questions 4, 5, 11, 12A and 17.

MR. TREPANIER: I note that questions 4 and 5 are general questions, and they are covered under the -- they are also listed in the agency's outline under general questions so I'll defer 4 and 5.

Question 11, are the new source

offsets required under the Clean Air Act currently in force year-round?

MR. ROMAINE: The Clean Air Act doesn't specify that offsets must be enforced year-round or are an annual requirement. The Clean Air Act requires that offsets be sufficient to represent reasonable further progress. Historically, we've applied it year-round. However, since ozone is a seasonal phenomenon, requiring seasonal offsets is consistent with the Clean Air Act as such offsets would be sufficient to represent reasonable further progress toward attainment.

MR. TREPANIER: I don't feel you've answered my question. My question is is this the current practice, the word currently? Is it the current practice to require these offsets year-round?

MR. ROMAINE: Yes.

MR. TREPANIER: And question 12A, would the ERMS proposal change this current Clean Air Act practice?

MR. ROMAINE: Yes.

MR. TREPANIER: Question 17, does the agency believe that no new sources subject to the

proposed rule will be sited in Chicago prior to 2003?

MR. ROMAINE: When you are saying no new sources subject to the rule, are you referring to major sources or just no sources whatsoever being located in the Chicago area?

MR. TREPANIER: Subject to the proposed rule.

MR. ROMAINE: Well, certainly there will be new major sources or there will be new sources in the Chicago area. New sources are built every day in the Chicago area. Those new sources will have to address this rule and in a general sense subject to it. The further question is will there be major new sources subject to the rule sited in Chicago prior to 2003. I think that's possible.

It doesn't look like it's going to be a very large number based on our historical experience with major new sources. Major new sources will be very infrequent, and we have not seen one that actually involves building a major new source from the ground up. Most of the major projects that we've dealt with and handled major projects we've dealt with have been in fact major

modifications.

MS. SAWYER: Mr. Trepanier, the questions that we have listed here as 4 -- the first two that you said, 4 and 5, we are referring to 4 and 5 of your handwritten questions on the last two pages of your submittal.

MR. TREPANIER: Okay.

MS. SAWYER: In some places there was a little confusion because some questions were numbered and others weren't.

MR. TREPANIER: Thank you. I'd like this question I just asked, No. 17, as specifically addressed to Mr. Forbes as earlier this question was deferred to Mr. Forbes, I believe, when I was questioning table 2 of the Illinois EPA's air quality strategy presentation, and there on line 1, under point -- designating the point sources, there were numbers shown in the parentheses.

There's numbers in parentheses for 1996, 1999 and the year 2002. And my question, I'm questioning the 92 that's in the parentheses for both 1999 and the year 2002. Does these numbers, being 92 both in '99 and in '02, indicate

that the agency believes that there will be no new sources subject to the rule sited in the non-attainment area during those years.

MR. FORBES: No, that particular number reflects the point in the regulation that any new major source is not provided an allotment, that it must seek ATUs from the market. Essentially, the pool of emissions is identified and is not allowed to grow for major new sources. That's what that 92 in both those occasions is intended to reflect.

MR. TREPANIER: Now, I want to continue the questioning about these numbers. I noticed that the 92 is 12 percent -- a 12 percent reduction from the 105 listed under 1996.

Does that 105 in 1996 indicate the agency's expectation of what point sources are subject to this rule?

MR. FORBES: What those two sets of numbers reflect were just as you described. It's intended to represent that 105 is the number of emissions associated with participating sources affected by the rule, and that they are required to achieve in aggregate a 12 percent reduction, thus resulting in the 92 tons per day figure.

MR. TREPANIER: I understand from the previous testimony that sources that have a construction permit in 1999 would be -- and then begin operations sometime after 1999 would be granted allotments, an allotment amount, that the cap would be expanded to allow for sources that have a construction permit in 1999 and then begin emitting after 1999.

MR. FORBES: In those circumstances in that transition period, they're allowed three years to establish what their actual emission level is, and ATUs reflective of that would be granted, if that's your question.

MR. TREPANIER: Yeah, that's the answer. Thank you. Now, the 92 that's reflected in 1999 and the 92 reflected in your year 2002, does that assume that no sources will take that option that was just described to have determined the amount of their emissions after 1999 and then receive the allotments?

MR. FORBES: The condition or the situation that you've described has been addressed in the numbers in the total emissions estimated for 1999. However, because it's uncertain as to

who might be in those circumstances, that specific emission increase was not allocated to the 92, but it is reflected in the total emissions projected for 1999. In other words, there is a small amount of growth anticipated. The agency is not certain as to which exact sectors those would occur, whether there will be minor new sources, minor modifications or transitional sources that come in with a construction permit in that transition period, but a certain amount to account for that small amount or that type of growth has been included in the total emissions.

MR. TREPANIER: What's the basis of your belief that there would be a small amount?

MR. FORBES: I would say based on the historical number of major new construction permits that have been received by the agency and because of the limited time that we're talking about here from 1997 through, I believe, 1998 when applications would be received. Because of that, I'm assuming that the number would be relatively small.

MR. TREPANIER: What is the exact date when the application would have to be received for

a source to -- these are the transitional sources that you referred to?

MR. FORBES: Yes.

MR. TREPANIER: Is a transitional source someone who has an application pending or who has a construction permit in 1999, issued in 1999? Could you describe that.

MR. FORBES: Construction permit by January 1, 1998.

MR. TREPANIER: Is January 1, 1998, the last time that a source could -- is that the cutoff period that at that point someone would have to have a construction permit if they wanted to get into this program, grandfathered in or somehow be an original holder of ATUs?

MR. FORBES: Yes.

MR. TREPANIER: You said that those sources that do during this year seek and obtain a construction permit for their source, that the agency has accounted for those -- that potential increase in the amount of VOM emissions that this program is going to allow. Where is that accounted for? Where is that reflected?

MR. FORBES: I believe I already

answered that. As I mentioned, it's not reflected in the 92 number because it's uncertain as to how many and if any such occurrences of that nature will happen, but we have afforded a growth amount for all the point source category. So that would be reflected in the estimated total emissions for 1999.

MR. TREPANIER: Is that the -- I'm noticing that in table 2 on the first line that the number under column 1999 is 160. In the year 2002, the number is 161. Is that where that potential increase in emissions for point sources is accounted?

MR. FORBES: Just a moment, I need to look at the table.

HEARING OFFICER FEINEN: I would just like to say that I'm giving you a little leeway here, but you're starting to ask some questions that you already have written out here. I mean, I think you're going into questions --

MR. TREPANIER: I'm asking my next question already.

HEARING OFFICER FEINEN: Yeah, you've had -- like on the handwritten question No. 1 is

dealing with Exhibit 6 and talking about the 105, and No. 2 is dealing with 92. So when we get to these questions, maybe we'll say you've already asked and answered them, but let's finish this line, but remember when I get to these, I'm probably going to state you already asked these. So let's finish this up, and if you're ready, Mr. Forbes, go ahead.

MR. FORBES: To answer your question, it would be reflected in the total number of 160 in 1999.

MR. TREPANIER: Now, that 160, if I understand your testimony, is that an emitter will need to have three years of emission history prior to establishing their baseline so that's going to occur for these sources -- that must occur for these sources after 1999, does it not?

MR. FORBES: It doesn't have to, but it possibly would.

MR. TREPANIER: They have to have three years of emission history prior to establishing the baseline?

MR. FORBES: Right, but it depends on when they come in for a construction permit. It's

possible that -- well, more than likely it would be after 1999.

MR. TREPANIER: Does the agency's summary of the attainment ROP scenario account then for those who are coming in with their baselines after 1999?

MR. FORBES: Well, essentially the growth that you're interested in -- that your line of questioning is going after, in our assessment -- because we do not know and can't specifically identify those circumstances, how many, to what degree, what the magnitude of those -- that particular growth would be, we have included and identified emissions in that group.

Now, if that particular growth happens to be associated with a CAAPP source, a source that's subject to the program, they would move over into the ERMS program, and they would be afforded those emissions in the trading program and assessed a 12 percent reduction. If that growth is associated with growth but not for a source that's in that circumstance, they simply will have whatever the emissions are that you've estimated for their growth.

So what I'm saying is that this is a conservative estimate, that if that circumstance occurs, that the -- we will get an additional 12 percent benefit that we have not identified in these numbers because we simply don't know what that quantity is, but the emissions from that have been accounted for in our planning analysis here. That's in the 160 that you see projected under 1999.

MR. TREPANIER: The 160 reflects the agency's best knowledge on what -- on new point sources that are going to begin emissions sometime after the year 2000?

MR. FORBES: 160 never reflects existing emissions and new sources that are projected to exist with control in 1999. So whatever growth and additional emissions we can project are included in the 160 number before 1999.

MR. TREPANIER: Then as we covered earlier, those who have their construction permit by January 1, '98, they are not included in the 1999 number, is that correct?

MR. FORBES: They may or may not because we don't know the circumstances. We have afforded

a quantity of increased emissions due to such construction activity, the best that we're able to estimate such growth. That growth is included in the 160 number that you see. Again, as I stated, that number, we're not sure whether that's associated with a source that would be coming in because it doesn't exist now and hasn't applied for such a permit, whether that particular situation will be an ERMS affected source or whether it would simply be minor source growth not subject to the program, but that quantity of growth in emissions is included in the 160 number.

MR. TREPANIER: How much is that number? What is the number the agency is anticipating is the amount of growth that's going to occur?

MR. FORBES: Off the top of my head, I can't answer that. I will have to, you know, do some -- go back and check. I don't have that number off the top of my head.

MR. TREPANIER: Will the agency provide that information?

MR. FORBES: Sure, yes.

MR. TREPANIER: I'm going to now ask question 1 from the first page of my handwritten questions regarding Exhibit No. 6. Does the agency's projection --

MS. SAWYER: Wait a second. Are we going in this order now?

HEARING OFFICER FEINEN: No, let's go off the record for a second.

(Discussion off the record.)

MR. TREPANIER: Has the state received an exemption from the Clean Air Act's new source review offset requirement?

MR. ROMAINE: No, we haven't. We have received something called a NOx waiver. That's more broad than that. That really excuses nitrous oxide emissions from control requirements as a precursor to ozone, but there has not been anything beyond that specifically exempting Illinois from the offset requirement of the new source review rules.

MR. TREPANIER: Question 5, could a unit meeting LAER still increase its allowable emissions by increasing production?

MR. ROMAINE: Yes, meeting LAER can

increase its emissions by increasing production, but it cannot exceed its allowable level or amount of emissions as would be established in its new source review permit. The circumstance here hasn't been described so I can't really speculate on what the implications might be for the source's baseline emissions or allotment.

MR. TREPANIER: That's what my question is actually going to. This question 5 I'm talking about in this one, this source, this unit that's meeting LAER is in the ERMS program, operating in the ERMS program. Can it still increase its allowable emissions by increasing production?

MR. ROMAINE: It can't ever increase its allowable emissions. Its allowable emissions will be set by the LAER limit. It has to comply with that. It will have to operate within its allotment of ATUs. Actually the source that includes that will have to operate within its allotment of ATUs.

If in fact there is an increase in production from an LAER unit so then there's more emissions that it received an allotment for, it will have to obtain ATUs from other emission units

at the source or go to market to make up the deficiency.

HEARING OFFICER FEINEN: Let's go back then to subpart B, applicability, Section 205.205, Tenneco's questions.

MR. FORCADE: These questions reflect our understanding of Section 205.205 that if a source elects to be exempted from the ERMS program under Section 205.205(a), the source will not be able to exceed 15 tons per season. Question No. A we believe has been asked and answered.

Question No. B, the first sentence, we believe has been asked and answered. The second sentence, if a source elects this exemption, will the source be required to comply with the full ERMS program?

MR. ROMAINE: The future treatment and status of the source would be addressed on a case-by-case basis in the actual enforcement action.

MR. FORCADE: Will the source be required to purchase ATUs for the emissions over 15 tons?

MR. ROMAINE: Again what that source has

to do in the future would be addressed as part of the enforcement action.

MR. FORCADE: Question C, may such a source decide at a later date to give up the 15-ton exemption and participate in the ERMS?

MR. ROMAINE: There's nothing in the proposal that would prohibit such a change in strategy by a source. To avoid enforcement, it would be appropriate to take that change prospectively.

MR. FORCADE: If a source did decide to follow this procedure, what is the procedure for doing that?

MR. ROMAINE: As I said, they do it prospectively ideally to avoid an enforcement action. We would then take them through the process as if they had been an original participating source. So we require that they submit an ERMS application.

We would establish a baseline emissions from their operation and emissions in 1994 and 1995 or '96 or other substitute seasons. We would then issue an allotment to that source appropriately reduced by 12 percent, and this

would all be accomplished as part of the modification of the source's Title V permit.

MR. FORCADE: Would this source then be an existing participating source or a new participating source?

MR. ROMAINE: This source would be considered an existing participating source.

MR. FORCADE: That would be true even if the facility had not originally elected to be an ERMS source and later opted into the program by amending its Title V?

MR. ROMAINE: Repeat that follow-up question, please.

MR. FORCADE: The questions that I had in question 4 were premised on a source which had elected to be exempted and then subsequently changed his mind, and how could it get into the program if it originally selected the exemption, the 15-ton per season exemption, and if they hadn't elected that exemption, if they later decided they wanted to voluntarily participate in the ERMS program, what is the procedure for doing so?

Will they be required to modify

their Clean Air Act permit? Will they be required to obtain ATUs, and if so, will they be issued baseline ATUs? But it's premised on a source that originally elected a 15-ton limit under 205.205(a) and later changes its mind and wishes to participate in the ERMS program.

MR. ROMAINE: That's correct. That's what I was responding to. I was responding to a situation where somebody had that choice as an existing source of either fully participating or pursuing exemption.

MR. FORCADE: Going on to question 5 in that same section, I have effectively identical questions relating to a source that elects to be exempted from the ERMS under 205.205(b) by reducing its emissions by 18 percent by 1999, and I believe the question A has been answered, and I believe that the first part of question B has been asked and answered.

If a source elects the exemption precluding emissions over 18 percent, will the source be required -- and later does have emissions over 18 percent, will the source be required to comply with the full ERMS program?

MR. ROMAINE: That would be addressed in the context of that specific enforcement action.

MR. FORCADE: Will the source be required to purchase ATUs for the emissions over 15 tons?

MR. ROMAINE: I think you mean the --

MR. FORCADE: I'm sorry, 18 percent.

MR. ROMAINE: Again that would be addressed in the enforcement action as to what is the appropriate remedy for what's occurred.

MR. FORCADE: And what will the cost of these ATUs be?

MR. ROMAINE: We don't know.

MR. FORCADE: May a source which has previously selected the 18 percent reduction exemption and decides at a later date to give up that exemption and participate in the ERMS, what is the procedure for doing so?

MR. ROMAINE: Again we could review an application for them to change their status under the ERMS. They would have to come forward and tell us that they want to have their status changed. In this case it would be much more straightforward because they would have already

had their baseline emissions established. What we would do then is add in the additional provisions for this source as if it were a participating source and begin issuing ATUs to the source at the 18 percent reduction level.

MR. FORCADE: Am I correct that they would receive for ATUs their baseline emissions less 18 percent rather than less 12 percent?

MR. ROMAINE: That is correct. The rule -- going back to -- we have given the choice, this option to provide X reductions to avoid the full rigor of the trading program. If such a source subsequently changed its mind, we have to provide a provision where they could then come back in and switch simply to a 12 percent reduction. The relevant provisions of the rule say they have to provide an 18 percent reduction in emissions beginning in 1999.

MR. FORCADE: Would such a source be called a new participating source or a participating source at that point?

MR. ROMAINE: Again starting the program, made this choice, it would always be a participating source.

HEARING OFFICER FEINEN: That concludes -- oh, we have a follow-up.

MR. SAINES: Yes, please, thank you. Rick Saines. With respect to question 4B, second sentence, I believe that you stated -- the question is, will the source be required to comply with the full ERMS program? And I believe the answer was that it would be addressed on a case-by-case basis as part of the enforcement action?

MR. ROMAINE: That's correct.

MR. SAINES: When you say "enforcement action," are you referring to -- is that necessarily indicating that it will not be covered as an emission excursion under the ERMS rules? Is it going to be considered an enforcement action as a violation of a CAAPP permit?

THE WITNESS: There is no provision for these types of situations to be considered excursions under the trading program. There is no automatic excursion fee associated with exceeding either the 15-ton per year limit or an 18 percent limit. They would have to be addressed on a case-by-case enforcement action as a violation of

a relevant condition in the Title V permit.

MR. SAINES: So what you're saying was perhaps part of that enforcement action will be further compliance with ERMS, but that's not the extent to which the enforcement action will cover? The enforcement action may include participation in ERMS, but the enforcement action is a completely separate action that is outside ERMS?

MR. ROMAINE: That's correct, and I guess to elaborate, it could be decided -- it was at one time a violation, and we continue safely back as exempted sources and they corrected the problem, or we may decide in a case that it is appropriate for them to again participate in the ERMS.

MR. SAINES: Just one initial follow-up. With respect to question C, I think the question was whether a source could decide at a later date to give up the exemption and participate, and you indicated that you believe there's nothing that prohibits that in the ERMS rules, but to avoid an enforcement action, the source must do it prospectively.

When you say prospectively, do you mean before the initial baseline determinations are established?

MR. ROMAINE: No, I did not. I meant before they actually exceed the 15-ton per year limit or the 18 percent reduction limit.

MR. SAINES: Okay, thank you.

HEARING OFFICER FEINEN: Mr. Trepanier.

MR. TREPANIER: On the same question regarding these exempted sources -- sources that take a 15-ton exemption. In the instance that there was an emitter at 10 tons new, who takes the exemption for 15 tons and gets to a point where they would like to emit 16 tons, is the -- I'm going to withdraw the question.

HEARING OFFICER FEINEN: Going on to questions that were filed on January 16th, 1997, question 8.

MS. FAUR: Good morning. I am Cindy Faur from Sonnenschein, Nath & Rosenthal. We have been monitoring these hearings for Minnesota Mining and Manufacturing Company, Sequel Corporation (phonetic) and Sun Chemical Company, and our prefiled questions are being posed for

several of our clients.

This is prefiled question No. 8 from our January 16th filing. I had asked this question previously, and it was deferred to the panel. The proposed rule provides a source with two means of exempting out of the ERMS system. The source can either accept a 15 tons per season emission limitation or submit an ERMS application in which it proposes to accept a baseline which reflects an 18 percent reduction in VOM emissions. Please elaborate on the selection of the 18 percent for the emission reduction requirement in this exemption.

MR. ROMAINE: A little bit of background. This exemption from the trading program was requested on behalf of certain types of sources. The agency agreed to the exemption if the source would provide a substantial reduction source-wide. We settled on 18 percent as one and a half times the 12 percent reduction generally being required from a market perspective. The agency's preference is that sources participate in the market, the trading program and make surplus reductions available to the general market and to

other sources.

The 18 percent level assures that sources carefully consider whether they pursue this exemption. However, from an air quality perspective, the 18 percent exemption does enhance the trading program's ability to provide a rate of progress required for 1999 which is our fundamental purpose for the program. So we did accept the source's request and accommodate them.

MS. FAUR: As a follow up, was there consideration of a 14 percent reduction or a 16 percent reduction for this exemption?

MR. ROMAINE: I think other numbers were thrown at us. We decided 18 percent was a good number.

HEARING OFFICER FEINEN: Moving on to the questions from Dart Container in the same Section 205.205.

MR. NEWCOMB: Chris Newcomb on behalf of Dart. These questions have all been asked and answered by previous questions.

HEARING OFFICER FEINEN: Thank you. I guess moving on to subpart C of the outline Section 205.310, ERMS applications, Tenneco.

MR. FORCADE: Yes. Section 205.310, our question No. 6 has been asked and answered. Question No. 7, will sources be allowed or required to submit information prepared under other programs such as the Clean Air Act Permitting Program? Under Section 205.310(b), what information may be referenced and not resubmitted?

MR. SUTTON: Well, if you've already provided this information, and a great deal of this information has already been accumulated in the Title V permit. If it is in the Title V permit and you can cross reference it, that is acceptable to us.

MR. FORCADE: So the answer is any information we can cross reference to the Title V need not be submitted in the ERMS application?

MR. SUTTON: That's correct.

MR. FORCADE: Under Section 205.310(b)(1)(C), in order to adjust the baseline for voluntary over-compliance under Section 205.320(d), what information must a facility provide to the agency in its ERMS application in order to meet the requirement that the facility

submit, quote, "sufficient information for the agency to determine the appropriate adjustment," closed quote?

MR. ROMAINE: In general we're looking for the source to provide the information to establish the baseline. We want them to put in order what they think the baseline is and for us to be in a position to review it and the particular question of voluntary over-compliance what we need to see is that the source has in fact reduced its VOM emission rate after 1990, and in fact, has reduced it beyond the levels of 1996 applicable requirements.

MR. FORCADE: As a follow-up, would this require an emission unit by emission unit emissions quantification, a regulatory applicability analysis for each such unit and an evaluation of the date and implementation of those regulations at the state level?

MR. ROMAINE: Some of the information you mentioned would have to be provided already in their CAAPP application. I guess we're speculating now what would be required in a particular circumstance and the particular

circumstance depending on how changes have been made at a source. In fact, it might be necessary to go down and look at unit by unit when specific changes have been made to the units and what are the result for the emissions of those units.

In other cases, several units may in fact be capable of being addressed as a group. Changes to those units may have been made as a group. The applicable regulations applies as a group. So it may not be necessary to break down emissions by unified analysis, but we will continue looking at the group of emission units as a whole.

MR. FORCADE: I believe question No. 9 has been asked and answered.

Question No. 10 has a series of subparts. It begins, what aspects of the ERMS other than the initial ERMS application require significant modification of a Clean Air Act permit which can take up to nine months to process?

Question A, will increases to a source's seasonal emissions or the subsequent purchase of ATUs require any modification of the Clean Air Act permit?

MR. SUTTON: It will not require a modification of a CAAPP permit if that increase doesn't violate an underlying requirement of the CAAPP permit itself. What I'm saying is if you had -- for some other reason your Title V permit accepted a monthly limitation, you would not be able to exceed that in your CAAPP permit, but the seasonal allotments that you get basically define the boundaries of which you have your own ATUs or need to purchase ATUs.

MR. FORCADE: Will decreases to a source's seasonal emissions or the subsequent sale of ATUs require any modification of a CAAPP permit?

MR. SUTTON: No.

MR. FORCADE: Will selling or purchasing ATUs require any modification of a CAAPP permit?

MR. SUTTON: No.

MR. FORCADE: Will a one-year transfer from one facility to another require permit modification?

MR. SUTTON: No.

MR. FORCADE: Will a 10-year transfer of ATUs from one facility to another require a permit

modification for either facility?

MR. SUTTON: It would not require one. At the time -- the permits themselves have a five-year life. If we're in fact looking at something that long range, we may want to address that when we review those permits, just reflect the balance. That wouldn't necessarily require modification.

MR. FORCADE: Then as a follow-up, would a permanent transfer of ATUs from one emission unit -- one facility to another facility require a Clean Air Act permit modification?

MR. SUTTON: Let me ask a clarifying question. Would this involve a shutdown?

MR. FORCADE: No.

MR. SUTTON: Then I would say not.

MR. FORCADE: But I have a whole series of questions about shutdowns later. If a source elects to be exempted from the ERMS under Section 205.205(a) because it agreed to limit emissions to 15 tons per season, will this require a modification of a CAAPP permit?

MR. SUTTON: Yes, it would. What was the question again? You said they were currently

exempt and wanted to become un-exempt or back into the program?

MR. FORCADE: No. This would be the process of becoming exempt, would that facility then have a 15 ton per year cap or limit, seasonal emissions limit placed on their permit?

MR. SUTTON: If the company elects to take the 15-ton exemption, that will become a permit condition in their Title V permit, that 15-ton limit per season.

MR. ROMAINE: Just jump in. We're trying to do all these CAAPP permits to initially address the training program so there wouldn't be a modification of the CAAPP permit required. That's just the way their initial CAAPP permit would be issued.

MR. FORCADE: If a source elects to be exempted from the ERMS under Section 205.205(b) because it agreed to reduce emissions by 18 percent, will this require a modification of a permit?

MR. ROMAINE: And it has to be discussed, yes, it would.

MR. FORCADE: And it would correctly

include a numerical emission limitation equivalent to an 18 percent reduction over baseline emissions as a seasonal limit?

MR. ROMAINE: I think the question I thought was if the source decided to give up this exemption.

MR. FORCADE: No. If a source elects to be exempted from the ERMS program, in other words, if it requests --

MR. SUTTON: If you seek that exemption based on the 18 percent, that number would be reflected -- the 18 percent reduction, your total VOMs per season would be reflected in your Title V permit as a permit condition.

MR. FORCADE: As a numerical?

MR. SUTTON: Yes.

MR. FORCADE: I believe I'm still continuing. Referring to Section 205.310(g)(3), which provides for the requirements for ERMS applications for new participating sources, please explain how new participating source should determine how it will obtain ATUs for the next three seasons?

A, can a source meet this

requirement by merely stating to the agency that it will purchase ATUs on the open market or ACMA, whichever is available?

MR. ROMAINE: No. The rule specifically requires that the source provide its plan to obtain ATUs. A simple commitment of this type would not necessarily constitute a plan. We would expect some further evaluation of the circumstances and some approach that would demonstrate a likelihood of success.

MR. FORCADE: Must a source meet this requirement by entering into a contract to purchase ATUs from another source?

MR. ROMAINE: No. That might be an acceptable approach, but there's no specific requirement that they have a contract. They could also enter into an option agreement. They might get an offer to sell ATUs from some other source. They may be able to describe some proposed changes they may make from other sources to obtain ATUs that are within their control.

They might simply show they already have sufficient ATUs being built up in their transaction account. They might show that they've

set aside adequate funds to purchase ATUs at the prevailing rates with some sort of reasonable reserve. So there are a whole range of options that a source in this circumstance can pursue. We can't really specify which one -- we don't specify which one has to be followed. They simply have to provide us a plan that shows they will have those offsets available and the necessary ATUs to satisfy the offsets requirement when they become due.

MR. FORCADE: If I'm understanding you correctly, the source must do something more than say they intend to purchase ATUs on the open market, but they do not necessarily need to go so far as submitting a signed contract for those ATUs to the agency. Could you elaborate a little bit on what in the middle -- what type of documentation the agency would need in order to satisfy the requirements for ATUs for three seasons?

MR. ROMAINE: Well, as I said, we want a plan, and the plan is more than simply a bald statement saying, we'll get ATUs, but one showing that they've thought about a specific way to get

ATUs or a number of options, and they think they can carry some or all of those options to completion.

MR. FORCADE: One of the options you've mentioned was the sufficient method of capital to purchase ATUs on the open market. Would the facility need to supply a letter of credit to the agency?

MR. ROMAINE: I don't think we would expect that. We would simply want to make sure they have contemplated what amount of resources would be necessary for that expenditure, that they haven't clearly underestimated the amount of money that will be required. So when the time comes to purchase the ATUs, they will have enough money to purchase the required amount.

MR. FORCADE: Would a statement that we anticipate the cost of ATUs for three years to be X dollars and we have adequate financial reserves to pay that be enough to satisfy the agency?

MR. ROMAINE: That's speculative, but it's conceivable it would.

MR. FORCADE: Under this section, is the new source required to obtain any of the ATUs

before the reconciliation period?

MR. ROMAINE: No. They are required to provide the ATUs at the end of the reconciliation period like other participating sources or new participating sources.

MR. FORCADE: For a Clean Air Act permit source which is not required to participate in ERMS, what procedure will it be required to follow in order to comply with ERMS and CAAPP if it becomes a new participating source under ERMS?

For example, a source emits seven tons per season operating one shift. The source is not required to participate in the ERMS. If the source expands to three shifts in 2001 and emits 21 tons per season, what requirements must it meet under the ERMS and will it be required to obtain ATUs?

MR. ROMAINE: First by way of clarification, you've described a source that is in existence when the trading program starts up so this source would never become a new participating source. It's always a participating source. As a participating source, it would be entitled to an allotment. The question is what allotment it

would be entitled to, and that really depends on how it expands its operations and how its permit is set up. So I think the description you've provided here doesn't mention that this is a major modification.

MR. FORCADE: I'm sorry, is that a question?

MR. ROMAINE: We have established two routes really that a source that isn't a participating source that has an increase in emissions becomes a participating source, there's one route established for sources that have major modifications. There's another source for sources that do not undergo major modifications.

MR. FORCADE: I think the analysis using an expansion of shifts was predicated on the idea that that would be exempt in Illinois from the new source review requirements.

MR. ROMAINE: In that circumstance, the source would receive an allocation of ATUs after it has gone through that first season where it became -- went over the 10-ton per season applicability criteria.

HEARING OFFICER FEINEN: Let the record

reflect that Mr. Romaine is responding to question 12A.

MR. ROMAINE: So they would have to submit an ERMS application. It would have to provide emission data for that key season where it exceeded the applicability threshold, and then ATUs would be allocated to that source for the following season.

MR. FORCADE: Would those ATUs be allocated premised on a baseline of seven tons per season or on a baseline of 21 tons per season?

MR. ROMAINE: We set up the program.

(Conference off the record.)

MR. ROMAINE: It would be based on the first season in which they exceeded 10 tons per season. In this case it's described. The first season would be 2001 where it emitted 21 tons during the season.

MR. FORCADE: So the baseline would be predicated on assuming a constant emission, would be predicated on 21 tons less 12 percent?

MR. ROMAINE: That's correct, assuming it doesn't qualify for an exclusion.

HEARING OFFICER FEINEN: Any additional

follow-up to that from Tenneco? If not, then I think we're moving on to Sonnenschein's questions 2 and 7E for the questions that were filed on January 16th, 1996.

MS. FAUR: This is prefiled question No. 2, and it concerns the integration of the ERMS requirements into the CAAPP application.

Does the agency intend to incorporate the ERMS requirements into the CAAPP -- or the CAAPP permit prior to public notice of the permits, or will certain sources be required to participate in additional notice periods to integrate the ERMS requirements into their CAAPP permits?

MR. SUTTON: Well, our intent is to review the ERMS applications concurrently with the CAAPP applications and only put them through notice period once to avoid that.

MS. FAUR: This is question 7E of our prefiled questions. Many sources have requested plant-wide applicability limits or facility-wide CAAPPs for operational flexibility in their CAAPP applications. These facility-wide CAAPPs were based upon maximum operating capability of the

facility to avoid lengthy permit modifications based on product and business demands changing over time.

The proposed rule, however, requires sources to determine their baseline based on average actual emissions regardless of whether these emissions reflect current business trends or product mix for the facility. To what extent can facility-wide CAAPPs be reconciled with the emission reduction and baseline determination requirements of the proposed rule? If the agency determines that a facility-wide CAAPP or plant-wide applicability limit may not be relied upon for ERMS purposes, will it refund the source's filing fee based on those higher emission levels?

MR. ROMAINE: That's a lot of questions, but the simple answer is no money back.

MS. FAUR: That's what I thought.

HEARING OFFICER FEINEN: Please, when you read your questions, go a little bit slower so the court reporter can keep up with you. That was a little fast there.

MR. ROMAINE: In terms of going through

some of the points, though, this question concerns the permitted annual emission levels proposed by sources in their Title V applications. These emission levels aren't really plant-wide applicability limits, which is a term that relates to non-attainment new source review. Rather these proposed levels in the Title V permit are the source's estimate for their permitted maximum emissions and what the source wants to be permitted for in terms of what they then pay for their permit fees.

When a source is permitted in this way, it doesn't allow unrestricted operation up to that level. A permitted emission level only allows operational flexibility to operate that source up to that emission level in certain fairly limited circumstances. One, there can't be other more stringent limits that apply and constrain the operation. You can't physically modify that source or modify particular emission units that trigger new source review, and you certainly can't add new emission units that would require construction permits.

So the permit emission level is

sometimes misunderstood in terms of believing it's unlimited operating flexibility, and that's just not the case. It may provide some flexibility, but the key thing to think about is it does define what you pay for your fees, and then I think you've also made some comments about how the baseline determination process is made. We certainly think that the selection of two seasons out of '94, '95 and '96 does accommodate business trends and product mix, and we've gone beyond that to say on a case-by-case basis, you can go out to '90, '91, '92, '93 or '97, and that certainly further accommodates atypical conditions to make sure that sources have baselines that they should be able to live within and we consider representative.

That's what gets me to the question itself, and a source can certainly revise the proposed permitted emission levels that it's put in its Title V application. For example, if a source sees that it will be reducing its VOM emissions to comply with the trading program and really no longer needs that old previous permitted emission level, they will be able to take

advantage of it. They can certainly come in and propose a lower permitted emission level in its Title V application. It can come in and revise its Title V application with that new information, and that would then determine what it would pay in the future for -- future permitted fees, but as I said, it would not alter what it owed in the past, and I guess I would also caution, though, that if I were a source, I'd think about that very carefully because the trading program by itself doesn't limit a source's emissions.

The trading program only requires the source to hold allowance trading units for whatever is emitted, and it's whatever is emitted during the seasonal allotment period. So the trading program doesn't put any restrictions on annual emissions from a source. If a source came in and said, I'm going to accept a lower permitted emission level, then they would in fact be restricted how they operate on an annual basis. So I think I've covered all the points that you touched on your question, but I think you have a follow-up.

MS. FAUR: Just to clarify, if I'm

understanding your response, if a source had requested operating limits which would reflect their maximum operating limit on a piece of equipment or like the equipment in the facility in their CAAPP application, they could still receive a CAAPP application with that limitation in it and have an emission baseline for the ERMS program that differed from that actual permitted emission level?

MR. ROMAINE: That is correct.

HEARING OFFICER FEINEN: We're moving on then to Mr. Trepanier's question No. 30.

MR. TREPANIER: What time and resources will be necessary to analyze the ERMS applications to your knowledge and expectation?

MR. SUTTON: Well, we currently have 40 permit analysts in the bureau of permits section we have hired and trained primarily to handle the Title V permits. Again just point of clarification, the source itself will have to put together its ERMS application and document and justify the basis for that application.

Our function then is to review the information submitted to us which is consistent

with how we currently do things. So we see that ERMS application review fitting in nicely with the Title V application review because it has -- covers the same sources and the same types of units, and so we feel that we have the resources and the people available to do that.

MR. TREPANIER: I understand that you can't answer the question directly. Can you make an estimate of what the time is going to be necessary to analyze these applications?

MR. SUTTON: The rule itself tells me I have to do a preliminary baseline determination within 120 days of receipt. We've already assumed that we'll have to put together an application to assist people to file. We also assume that we'll probably have to be available to meet with people to discuss their baseline determinations.

We offer that assistance as we had when we allowed people to come in and talk to us about putting their CAAPP applications together. Once it's submitted, we assume that we can complete that review. We have not done a detailed analysis of how much additional manpower that it might take. My boss has told me that I've got

plenty of people to do that. Actually in reality, I think we can handle it with the staff we have, and as Title V applications are proceeding, we should be able to pull it off.

MR. TREPANIER: I'm trying to reach the information on what kind of an investment we're going to be making in processing these ERMS applications. Is that the 40 analysts? Is that the best estimate you can do?

MR. SUTTON: Yes. Now, let me ask one point of clarification. We also have to review 800 CAAPP permit applications which is the underlying reason why we hired the 40 analysts and the underlying reason why people pay us fees to do the Title V processing. I guess I'd also like to elaborate if in fact we did not have ERMS available and had to go to command and control, my section would also be responsible for reviewing construction permits for that command and control. So I see this as a trade off of resources, not as an additional new source.

MR. TREPANIER: Is it your anticipation then that your section will not be reviewing construction permits once the ERMS applications

are being submitted?

MR. SUTTON: No, we will continue to review construction permits, but if we had to go to across the board, as we've historically done, with coming up with the command and control rule and say, now you have anywhere from 18 months to three years to put that in place, those dictate -- historically have dictated the additional use of control equipment which we require them to permit.

Under this particular program, there will continue obviously to be construction permits but not to the scale that would have been driven by command and control type approach.

MR. ROMAINE: Let me jump in, Don, as well, that one of the other things about Title V applications is they're supposed to be a comprehensive listing of the applicable requirements applying to a source. If we continued on command and control rules, we would be periodically reopening people's applications and modifying them to add in additional command and control requirements.

So we would have a fairly

substantial burden in having to -- I don't know. Each time the command and control rule applies to one of our 200 sources or 250 sources changed, we would be involved in permit modification that would simply be a sizeable undertaking if we continued under command and control regulations.

MR. TREPANIER: What time and resources are expected to be necessary to make the case-by-case determination during the allocation process for the level of control present on an emission unit for which the polluter is seeking an exclusion based on BACT or BAT?

MR. SUTTON: Again as a point of clarification, the applicant themselves has to put together the application and be able to defend it's election. So it has to make the case for me, and I review the information submitted to them. We currently do a similar type review as part of our BACT reviews for PSD type applications. We have generally done that by having an analyst assigned to that.

If he has problems, he then has a peer group he can take it to basically which is made up of senior permit analysts or unit

supervisors to then collectively say what experience they have as far as seeing similar type of approaches in the past. So for example, somebody makes a BAT determination. An analyst has somebody he can go to and say, they made a fairly good showing, is this consistent with what we've done in other areas, and they can then as a group decide that it is consistent or not or ask for additional information.

We again have not done an independent evaluation of exactly how much resources it would cost to do that, but we feel that again it would be covered as part of -- since we're currently going through the Title V permits and we have to determine what rules apply to those sources now -- and again, the obligation was on the source to provide that. But we have to confirm source properly identified all applicable regulations and what monitoring, reporting and recording would be done with those modifications.

That's already been identified in the Title V permit that they have sought. So as part of their BAT, I would suggest they would then go through the source and say, we obviously are in

compliance, and we feel that we've got a high level of compliance and can build on that CAAPP application. So this is an extension of the CAAPP application review that they've already anticipated.

HEARING OFFICER FEINEN: Seeing no follow-up, I guess we'll move up.

MR. SAINES: I have one follow-up question, and it relates to Tenneco's question No. 12. It's my understanding that the answer to the question concerning a source that first becomes subject to the rules of 2001 is that they will receive an ATU allotment based on one-year's worth of emissions stated, that first year that they exceed the 10-ton limit. Was that the answer there?

MR. ROMAINE: That's correct. This is an existing source that had been under 10, first goes above 10-ton, receives a limit in 2001.

MR. SAINES: Could the agency elaborate on why this particular source will be given ATUs based on one year emission data, whereas sources where three years' worth of emission data is not existing prior to the rule first being

promulgated, they get three years worth of emission data to which ATUs will be allotted?

MR. ROMAINE: This was an approach that was selected to deal with sources that originally had emissions less than 10 tons so they were not originally affected by the trading program. We were concerned that allowing additional periods of time would allow even higher baseline emissions so we wanted to get them into the program as quickly as possible once they have gone above the 10-ton per season emission level.

MR. SAINES: Thank you.

MR. TREPANIER: Continuing the questioning on 12A, why did the agency not require that emitter who is now going above 10 tons to purchase ATUs for those greater emissions that are not accounted for on the original CAAPP?

MR. ROMAINE: Again it was simply the approach taken to a source that was initially outside of the program, a source that had been attempting through the years to keep its emissions completely below 10 tons per year.

When there is a major change at that source that brings them into the program, a

decision was made that we would give them that one year where they exceed the 10 tons as the basis for their entry into the program.

MR. TREPANIER: Is there a certain way that the agency is going to determine if somebody was an existing -- how is the agency going to determine if somebody was an existing emitter under 10 tons? Would a one-ton emitter be able to get an increase to 22 tons and get a 22-ton allotment in the year 2002?

MR. ROMAINE: Well, the example you've described probably involves a major modification. So the major modification would be treated differently. This is one that in fact has an increase in emissions that would not be a major modification, and in terms of what we've said, that source, if it in fact has an increased emissions, goes from being less than 10 tons per year or season to more than 10 tons per season would receive an initial allotment based on that season in which it exceeds 10 tons. Of course, its allotment would then be reduced by 12 percent unless it qualifies for an exclusion.

MR. TREPANIER: You couldn't foresee

going from one ton to 22 tons, but you could see someone going from 7 tons to 21 tons?

MR. ROMAINE: You're asking me to speculate. That's the example I responded to, and it's conceivable. It seems surprising to me that a source would go from one shift to just three shifts that quickly. Usually changes occur more gradually at manufacturing plants, but it's conceivable.

HEARING OFFICER FEINEN: Any additional?

MR. TREPANIER: If they could do that, there would be an impetus to do that, wouldn't there, if they wanted to sell those 22 tons of allotments?

MR. ROMAINE: Well, that's correct. That would be one factor. On the other hand, it's very expensive to run a manufacturing plant without having a market for the product you produce. The first impetus is in fact there is a demand for the product that encourages me to produce more material for sale. The impact on the trading program would be minor compared to that.

MR. FORCADE: I'm ready to go on to our

next section.

MR. DESHARNAIS: Mr. Romaine, I was just asking if you could additionally clarify how these emissions would be included in the overall CAAPP established based on 1990 emissions?

MS. SAWYER: I'm not exactly sure what you're asking.

MR. DESHARNAIS: It seems to me that these emissions that you're talking about is a source that expands -- is in existence and then becomes subject to the ERMS trading program. Their baseline is going to be determined after the initial baseline was established for the whole CAAPP trading program. It seems that these are emissions which are higher than what we were taking into account for them in 1990.

MR. ROMAINE: Well, they certainly would be higher than what we're taking account for them in 1996, the start of the trading program, you're correct, and the additional emissions could affect what has been called to us the cap on the total flow of emissions, and whatever effect that has would have to be evaluated when we did our periodic review of whether we were achieving our

rate of progress planned requirements.

MR. DESHARNAIS: Would this type of expansion be included in allowance made for growth?

MR. FORBES: Yes, this minor source of growth has been accounted for.

MR. DESHARNAIS: Thank you.

HEARING OFFICER FEINEN: Before we break for lunch, I want to finish up the next section which is Section 205.315, CAAPP permits for ERMS sources, and then we'll break for lunch before we go on to baseline emissions because I think that might take a while.

MR. FORCADE: Moving on to question 13 on page 7 of our submission, Section 205.315, it's difficult to determine what VOM emissions limitations and other ERMS related conditions will be contained in a Title V permit for an ERMS source. Will the agency provide the text for a hypothetical Title V ERMS permit for a simple source which would show the ERMS terms and conditions?

MR. SUTTON: Let me start out as a point of clarification. The Title V permit will convey

the underlying state and federal requirements for compliance. It will also convey a method of determining your actual emissions during your season, but those will not be limits. Those will just define how you account for your actual emissions so that you can tell the compliance how many ATUs you need. You either got enough or not enough at the end of the season.

Those particular limitations will actually be carried forward from what you present as part of your baseline determinations. So the methods you've used historically to come up with your actual emissions, our plans are to take that and carry that forward as a record keeping vehicle in your Title V permit. So it's somewhat dependent on what the source presents to me. Does that get at where you're heading?

MR. FORCADE: Partially. I was looking more towards the sort of general language that would be employed in ERMS terms and conditions in a permit. Since we have not seen one, it's difficult to understand how the agency intends to implement it, and I was just curious if there had been any samples or drafts what an ERMS permit

would look like that we could see the kind of language the agency would put in for terms and conditions so we would have a better understanding of how the agency intended to address this in Title V permits.

MR. SUTTON: Well, obviously our intent is to hold off and do this after the ERMS applications come in and putting them out to notice. We have actually not drafted one to that point yet.

MR. FORCADE: That would be at the close of public comment here, wouldn't it be?

MR. SUTTON: More than likely. One of the other areas that we're heading into, though, as far as going back to -- we are planning on drafting some Title V permits for sources that aren't in the ERMS trading program, but let's say on the metro east area on under 219, and so there will be some drafts available of those. So you can get what some of underlying CAAPP permits might look like, but it won't reflect what the ERMS portion will look like.

MR. FORCADE: The area of confusion I'm having is I've seen CAAPP permits from other

states. I've seen draft CAAPP permits in Illinois. I've never seen any ERMS language, and therefore I don't know what it is, and I was asking if there was any of that, but I think we can move on to the next question.

The following question is an attempt to determine what limits might be contained in a Title V ERMS application-- permit, excuse me. Facility P is a single simple paper coating line that operates at 50 percent of its maximum capacity with actual emissions of 10 tons of VOM per year, 50 tons per season -- I'm sorry, 10 tons per month, 50 tons per season and 120 tons per year.

Facility P meets the reasonably available control technology standard for VOM by using a coating with a VOM content of 2.3 pounds per gallon. Facility P's existing permit contains only the 2.3 pound per gallon limit and daily and annual production limits equivalent to 20 tons per month which is its potential to emit and which is twice its actual emissions. After the ERMS is implemented in Title V, will the Title V contain the 2.3 pound per gallon limit?

MR. ROMAINE: Yes. You've described this as a RACT requirement. RACT requirements will certainly be carried over to the Title V permit.

MR. FORCADE: Will the Title V permit contain a daily VOM emissions limit equivalent to 20 tons per month?

MR. ROMAINE: Again this would depend on what is the basis for the current limits in that source's permit. So if I assume that these requirements follow conditions of the construction permit that are federally enforceable that were established for the purpose of new source review, then those conditions would certainly be carried over.

If in fact, those are simply conditions that appeared in the source's operating permit for which there is no regulatory requirement, one of the things that would occur in the Title V permit would be to clean up the existing operating permits, and if in fact there were conditions without a regulatory basis for them, we would not continue those conditions into the Title V permit. Conditions in operating

permits are certainly suspect on their face because those aren't federally enforceable unless it's a federally enforceable state operating permit. So again, we would have to look at it on a case-by-case basis to see exactly what is the underlying reason that those conditions appear in the first place.

MR. FORCADE: The third question is, will the Title V permit contain an annual VOM emissions limit equal to 240 tons? Would that be the same answer?

MR. ROMAINE: That would be the same answer.

MR. FORCADE: Will the Title V permit contain a seasonal VOM emissions limit equivalent to 50 tons?

MR. ROMAINE: No, it would not.

MR. FORCADE: If not, will it contain any seasonal VOM emissions limitation?

MR. ROMAINE: No, it would not. This has been described as just an ordinary participating source. The Title V permit for an ordinary participating source would not limit its emissions on a seasonal basis. It would simply

describe what the baseline emissions were and what the allotment of ATUs to the source were as a result.

MR. SUTTON: And it would also establish what method you would use to reconcile that number at the end of the season.

MR. FORCADE: Will the Title V permit contain a 1999 VOM emissions limitation equivalent to 50 tons reduced by 12 percent?

MR. ROMAINE: No, it would not.

MR. FORCADE: If the source purchases or sells ATU, will the seasonal VOM emissions limitation in the permit be adjusted upward or downward? Am I correct in assuming that the answer is no because there will be no seasonal limitation?

MR. ROMAINE: That's correct.

HEARING OFFICER FEINEN: Okay. Moving on to Dart Container's question No. 5 unless there's any follow-up to that. Dart Container, question No. 5.

MR. NEWCOMB: Christopher Newcomb for Dart Container. I think to some degree this may have been covered by previous questions, and since

there's only one question, I'll go ahead and throw it out.

Why hasn't the agency proposed greater flexibility for participating sources to modify the operations without administrative proceedings formally changing the permit terms in order to encourage greater reductions similar to the wide flexibility allowed under the Clean Air Act's Title IV SO2 trading program and consistent with one of the principal goals of the CAAPP Title V program?

MR. SUTTON: Well, I guess in response, I think we feel we have done that. So that's the purpose we are proposing the program is to allow that flexibility.

MR. NEWCOMB: The goal of that question when I first draftd it was that under the SO2 trading program, there seemed to be wide flexibility for sources to modify their operations without necessarily undergoing administrative proceedings to modify their permits, and I didn't see that same flexibility necessarily afforded here, but as I said when I started this, to some degree this may have been asked and answered

because Mr. Romaine has said that the agency is tied to the requirements under the Clean Air Act NSR modifications and such, and I want to make sure that is in fact the correct answer here.

MR. SUTTON: Uh-huh. I guess the one point we'd like to make -- and I guess this is a kind of a follow-up to those previous questions -- is that there obviously will be annual limitations and limitations carried forward to this program that you just mentioned. But as far as the season, we will establish the ATUs that are allotted to you and the method for you to reconcile at the end of the season what your actual emissions were, but there is -- for the participating source, there is no limit during the season that you can use if you can go out and buy those as long as you're still in compliance with the general underlying permit. So that's the flexibility we see that is provided.

MR. NEWCOMB: Understood.

MR. ROMAINE: I think the other distinction that has to be made is in terms of emission determination methods. Under the acid rain program, affected power plants are all

subject to extremely rigorous emission determination methods. All of them, I believe, are subject to continuous emission monitoring which means the emission determination method is sufficient to address any change in operation of those units.

Our program does not mandate any specific form of emission determination methods. Emission determination methods will be set on a case-by-case basis in a source's CAAPP permit. That means there may be circumstances where the emission determination methods would have to be changed or reviewed before we allowed particular changes in operations to be reflected in the source's emissions. So I think part of the area where we need more oversight is really in terms of the emission determination methods, but that's because we've given a lot of flexibility up front to sources to come up with particular methods that they think are appropriate for their operations.

HEARING OFFICER FEINEN: Can we go off the record for a second.

(Discussion off the record.)

MR. TREPANIER: A question of the

agency, when do you anticipate you want to inform sources of their allotment of ATUs? And this would be the initial -- the initial communication on this.

MR. SUTTON: Well, the sources have to file, if this rule gets adopted, an ERMS application by January 1st of 1998, and we have up to 120 days to give them a preliminary determination as a baseline after that submittal.

HEARING OFFICER FEINEN: For the record's purposes, that was a question directed from Mr. Trepanier in the prefiled questions. It's under his questions for Mr. Sutton. It starts out on, "page 9, when do you anticipate."

MR. TREPANIER: Then from my prefiled questions, the final page, the third question, will there be public notice and review of ERMS applications?

MR. SUTTON: There will not be independent public notice of ERMS applications. However, they will be incorporated into the overall Title V permit which there will be a draft permit put out for public notice and comment. So it will be incorporated as part of the overall

CAAPP permitting process which includes public notice.

MR. TREPANIER: Can you give me a little more clear indication when -- when the emitter puts in their application, is there a certain period of time that's going to elapse prior to the public notice?

MR. SUTTON: Yes, there probably will be. We have the 120 days to do the determination. We plan on doing our CAAPP permit reviews for these particular sources even ahead of that date to help assist in developing the preliminary ERMS applications. So once we have the determination done, our goal is to take that and then with the knowledge we've already gained on the CAAPP review, finalize that particular CAAPP permit putting the two pieces together and then putting it out as a draft permit to public notice.

I would hope we could get that done within another three to four months after that 120-day period. So it may -- sometime, well, this is on the record so you got this. Sometime obviously prior to '99 you want to make sure, and

hopefully within the calendar year 1998 we would like to have the CAAPP permits issued for these sources, at least put out the notice.

MR. TREPANIER: So I understand that the public notice and opportunity to review these ERMS applications and the proposed baseline of the polluters is going to occur after the emitters are notified of how many ATUs they're going to receive?

MR. SUTTON: Yes.

MR. TREPANIER: And prior to the issuance of those ATUs?

MR. SUTTON: Yes, that's our hope, to have the actual CAAPP permit with the preliminary baseline determination issued prior to the 1999 season when they need them.

MR. TREPANIER: Does the agency intend to utilize that opportunity during the public review of these ERMS applications to consider input regarding a proper setting of these baselines or the proper number of allotments that a polluter should receive?

MR. SUTTON: I would assume so.

MR. TREPANIER: So there may be a

review, there may be revisions from that 120-day notice of the number of ATUs, and when the ATUs are actually issued, there's an opportunity for revision there?

MR. SUTTON: Well, as in all cases when we put the draft permit out for public notice, the entire permit itself is available for public scrutiny. If somebody enlightens us that in fact there has been an error made in that, then we would go back to the company, explain the process and make the adjustments.

HEARING OFFICER FEINEN: I believe we're going to go to the questions from the coalition. The question is on page 12. It's question 10 or section 10. I don't know how you --

MR. SAINES: This is our revised prefiled questions, section 10 pertaining to Section 205.315, and the question implicates three examples. I'll just read the question, and if you need clarification, I will be happy to provide it.

If a participating source loses: (1) an appeal of its baseline emissions determination; (2) an appeal of the methods it

must use to determine emissions; or (3) an appeal of a BAT determination, how will the agency handle the reconciliation of ATUs for seasons which have passed and for which compliance was based upon the total allotment or methods?

MR. ROMAINE: The rule provides that a source is allotted ATU based upon its proposal during the pendency of the appeal. So any consequences for the future can be addressed as part of the appeal itself, but there are no consequences while the appeal is pending.

MR. SAINES: Let me ask for clarification. Are you saying that if the source loses the appeal, there may be consequences that are not reflected in the proposed ATU allotment? In other words, they won't get the ATUs that they proposed, they will get a lesser ATU amount?

MR. ROMAINE: That is correct, beginning from the point at which that decision is made. It would not apply retroactively.

MR. SAINES: It would not apply retroactively. So it would not be considered an emissions excursion for the season that has passed during the pendency of the appeal?

MR. ROMAINE: That's correct. The reason -- hopefully all things will be taken so it will be clearly out of sight of the season and there would never be a decision that occurred in the middle of August.

MR. SAINES: Thank you.

HEARING OFFICER FEINEN: I have one follow-up question. If there's no others, then we'll break for lunch, and this is to anyone at the agency.

Would Section 40.2 of the Act apply to the CAAPP permitting program that includes the ERMS?

MS. SAWYER: Yeah, I believe so. That's the ERMS permit appeal procedures.

HEARING OFFICER FEINEN: That's the Clean Air Act permit appeal, appeal procedure?

MS. SAWYER: Yes.

HEARING OFFICER FEINEN: Thank you. Any other follow-up questions? Seeing none, let's break for lunch and be back in an hour, 10 to 2:00 or 2:00 o'clock. 2:00 o'clock let's be back. Thank you.

(Lunch recess taken.)

HEARING OFFICER FEINEN: We're back after lunch break. We're going to start out with Section 205.320, baseline submissions, the questions from Tenneco starting out with questions 15.

MR. FORCADE: Thank you, Mr. Chairman. Mr. Hearing Officer, this is reading from page 8 of our pre-submitted questions, Section 205.320, baseline emissions. Referring to Section 205.320, in its statement of reasons, the agency states that, "a source's baseline emissions is established based upon actual production level and its allowable rate of emissions."

What is the meaning of "allowable rate of emissions"? Does "allowable rate of emissions" include any of the following: Emissions within mandatory numerical limits set by federal statutes and regulations?

MR. ROMAINE: Yes. That term would include numerical emission limits set by federal statutes or rules. Essentially, I think what the statement of reasons meant when it used the term allowable rate of emissions was applicable requirements effective in 1996. So it would be

requirements that will be effective in 1996 that will be relied upon for the rate of progress plan that would be reflected in a source's Title V program.

MR. FORCADE: Would it include emissions within limits set by new source review permitting or new source review avoidance permitting?

MR. ROMAINE: Yes, it would.

MR. FORCADE: Would it include emissions within mandatory numerical limits set by Illinois statutes and regulations?

MR. ROMAINE: Yes, it would.

MR. FORCADE: Would it include any other limitations, and if so, please identify all such bases for an "allowable rate of emissions."

MR. ROMAINE: There may be some other enforceable provisions that would also be considered applicable requirements effective in 1996. I can't think of any off the top of my head.

MR. FORCADE: Does "allowable rate of emissions" include historical permit conditions which do not have a regulatory basis, but which the facility did not appeal at the time because it

did not impair past operations?

MR. ROMAINE: This is an area where the Title V permit process plays a role. If the absence of an underlying regulation is recognized during the Title V permitting process, then that limitation could be effectively eliminated. This activity is sometimes referred to as permit hygiene, but one of the activities that USEPA expects to occur during Title V permitting is to clean up conditions in previous state permits and to eliminate conditions that are no longer needed. Conditions that do have in fact justification associated with them would then be carried over into the Title V permit so that the Title V permit would be a comprehensive listing of all the applicable air pollution control requirements for a source.

MR. FORCADE: Question No. 16, continuing the above quotation, the agency states that, "and if this is higher than the actual emissions rate it is achieving, the source is allowed to use its surplus emissions to meet its emissions reduction target in the ERMS or may sell any surplus ATUs on the market."

Will a source be allowed to include in its baseline or receive ATUs for emissions limited by permit conditions which do not have a regulatory basis, but which the facility did not appeal because it did not impair past operations?

MR. ROMAINE: Well, I think I first want to qualify this answer by saying there is the requirement that voluntary over-compliance as recognized by the ERMS occur due to some change or improvement made after 1990, but in terms of the specific question, there would be nothing preventing a source from including those emissions in its baseline as a general matter, but I guess if you're asking whether the source can receive over-compliance recognition in its baseline, then you would have to go into the issue of whether in fact it was a regulatory basis for that limitation.

If the limitation were changed that there were no longer a regulatory basis or recognizing that there is no longer a regulatory basis, then the source could not rely upon that limitation to establish voluntary over-compliance. In that case the source would have to use its

actual emissions to determine baseline emissions.

MR. FORCADE: Moving on to question 17, Section 205.320 provides that baseline emissions will be increased for voluntary over-compliance that occurred after 1990 and results in emissions lower than 1996 requirements.

Under this subsection, what does "applicable requirements effective in 1996" mean, and would it be the answer to the previous question repeated again?

MR. ROMAINE: Yes, it would.

MR. FORCADE: I believe then you have also answered question B, and we withdraw it.

On the number C, does "applicable requirements effective in 1996" exclude maximum achievable control technology or MACT?

MR. ROMAINE: No. MACT requirements could in fact be applicable 1996 requirements.

MR. FORCADE: I believe you've answered D. Does "applicable requirements effective in 1996" include facilities or units for which the state has not promulgated any regulations? For example, how will the agency determine the baseline for: A warehouse used to store products

emitting VOM; (2) a landfill emitting VOM; or (3) an industrial laundry that did not use VOM but emitted VOM from rags and clothing which it received?

MR. ROMAINE: I think the answer to the general question is if particular emission units are not subject to any applicable requirements, the baseline emissions would be based on a unit's actual emissions. The specific examples that you've mentioned, I'm not sure that there aren't applicable requirements for these operations.

Certainly new source review could apply to these operations, and the USEPA has gone out in an interpretive memo confirming that new source review is certainly applicable to whiskey storehouses, for example. USEPA has also proposed new source -- actually adopted new source performance standards that apply to new landfills emitting VOM. So if there were units for which there were no applicable regulations and go back to actual emissions, I'm not sure you can generalize with these particular examples, though.

MR. FORCADE: As a brief follow-up, could you give me a little more elaborate

explanation about that memo on warehouses, approximately what time frame or where I might find it?

MR. ROMAINE: I think it's a determination that was made for Indiana in the last couple of years.

MR. SUTTON: It was definitely Indiana.

MR. ROMAINE: I believe that's the type of information that USEPA would make available through its TTN information system.

MR. FORCADE: And under question F, does "allowable rate of emissions" include emissions within permit limits which do not have a regulatory basis but which the facility did not appeal because it did not impair past operations?

MR. ROMAINE: As I tried to explain before --

MR. FORCADE: Same answer?

MR. ROMAINE: Yes.

MR. FORCADE: 18, will fugitive emissions be included in the baseline?

MR. ROMAINE: Yes, unless the emission units are in fact significant activities.

MR. FORCADE: What is the agency's

authority for regulating fugitive emissions under ERMS?

MR. ROMAINE: The proposed rule will be a board rule, and therefore, our authority isn't in question. The authority of the board is addressed by Title I, Title II and Title VII of the Environmental Protection Act. We believe that the board has ample authority to regulate fugitive emissions. The board has adopted regulations, for example, that apply to leaking components, apply to cooling towers, apply to architectural coatings.

So we don't see any particular restriction on the board's ability to go after particular emission units simply because the emissions can be characterized as fugitive in nature.

MR. FORCADE: Are fugitive emissions by definition inherently more difficult to capture and control than point source emissions?

MR. ROMAINE: I wouldn't make that generalization. Certainly there are some emissions that we consider fugitive that are relatively easy to control. For example, a

leaking component can be controlled by repairing the leak. So identify a leak, you go and repair it. Other types of fugitive emissions can be controlled by changing process materials to lower emitting VOM materials.

I think even though it's sort of -- there's this great distinction between fugitive emissions and non-fugitive emissions, it really came about in the federal program for purposes of applicability. So the federal regulations do make the distinction between fugitive emissions and non-fugitive emissions in certain cases to determine whether a source is a major source. However, once a source is found to be major, no distinction continues in terms of the fugitive emissions versus the non-fugitive emissions. Once a source is major, all emissions at the source have to be accounted.

MR. FORCADE: Brief follow-up, are fugitive emissions by definition inherently more difficult to capture than point source emissions?

MR. ROMAINE: Yes, that's the inherent definition of fugitive emissions. It's something that either is not passing through a stack or

could not reasonably pass through a stack, vent, chimney or other equivalent opening.

MR. FORCADE: Based on that, does the ERMS disproportionately impact facilities with large amounts of fugitive emissions?

MR. ROMAINE: I don't believe so. Since it's a market program, it attempts to treat all sources identically and allows individual sources flexibility to determine the best strategy for their particular circumstances, whether to reduce the VOM emissions themselves, and if so, how and which units or whether to go to the marketplace to obtain credits from other sources.

HEARING OFFICER FEINEN: I guess Sonnenschein's questions from January 16th, question 7D and 7F.

MS. FAUR: Question 7D is addressed by the questions we filed on January 30th. So we will withdraw that, and we are withdrawing 7F because I believe it has been answered in the testimony.

HEARING OFFICER FEINEN: Thank you.

MS. FAUR: So moving on to the January 30th prefiled questions, this is -- they're all

based on a scenario -- a consolidation scenario for facilities coming in to the -- or trying to consolidate operations into the Chicago non-attainment area.

If a company has multiple facilities in the Chicago area, all of which are major sources of VOM, have the appropriate permits and are in compliance with all applicable requirements, what happens in the following situations: Question 1, two or more facilities are consolidated into a single facility after 1996 or after the initial baseline information is developed.

1A, may the allowable emissions from the closed facilities be transferred to the remaining facilities, i.e., can the baseline emissions of the facilities within the non-attainment area that are part of the consolidation to be aggregated to avoid the complicating factors of new source review, please assume the emission increase at the resulting facility is less than 25 tons PTE.

MR. ROMAINE: A couple of different clarifications that I need to have. You've said

that both of these sources are major sources, but you've said that the consolidation does not result in a major increase.

MS. FAUR: Right, right. They're consolidating operations, but the actual increase will result in less than a 25-ton increase at the consolidated source.

MR. ROMAINE: I think there are really several options that a source has in that circumstance when they're dealing with consolidations that occur after 1996. If the sources have not yet received allotments of ATU, one option would be to continue through the process till they receive CAAPP permits reflecting how those two facilities have operated and then consolidate in terms of ATU.

Another option would be not to pursue the CAAPP permit for the facility that will be ceasing operation at some point, but instead to address its change as an emission reduction generator. I think that would be possible. And then if the baseline hasn't yet been determined but there will actually be transfer of operations, it's conceivable that consolidation might be able

to be addressed as a pending project.

In fact, there will be certain emission units that will now be present at the consolidated source that have not yet operated for three seasons at that new location. Again assuming that that can be accomplished with a construction permit issued prior to January 1st, 1998. So there are several different options that would be available, and the source would have to decide which is the preferable option for their particular needs and timing.

MS. FAUR: Could you explain the second option, the option not to pursue a CAAPP application, but to treat the facility to be consolidated as an emission reduction generator? How would that work permitting? Would they get like a FESOP or something for the interim period?

MR. ROMAINE: You're asking whether the facility that will be gradually phasing out its operations needs to obtain an interim permit that would address its changing operations? I guess perhaps. That again would depend on the particular circumstances whether the consolidation will happen all at once so they can simply

withdraw the permit at some point in time, whether there will be a gradual change.

If in fact the two facilities will now be operated or owned by a single entity, its conceivably necessary enforceable provisions might be addressed in the CAAPP permit for the source that will remain in operation. Again flexibility and certainly the ERG process is designed to provide flexibility to accommodate a variety of circumstances for non-participating sources that wish to have emission reductions that are converted into ATUs.

MS. FAUR: This is 1B. With respect to BAT requirements, would an agreement to install BAT at the surviving source affect the issues?

MR. ROMAINE: No, it wouldn't. The BAT really affects the requirement to reduce baseline emissions by 12 percent when setting an allotment. The issue you've posed is how to combine the baseline emissions or address the consolidation which is really a prior issue as compared to whether you have to do a 12 percent reduction or not.

MS. FAUR: Question 2B, a company has

two facilities, one within the Chicago non-attainment area and another facility within 100 kilometers upwind of the Chicago area. If the upwind facility is consolidated into the facility in the non-attainment area, can the emissions from the upwind facility be included in the baseline for the surviving or consolidated facility within the Chicago non-attainment area? Would the response to this question differ if this consolidation occurred in either one of these three years, 1997, '98 or '99?

MR. ROMAINE: There is no provision for participating in this program by sources outside the non-attainment area. So some of the options we discussed about pursuing a CAAPP permit or an ERG process would certainly not be available in this circumstance. The only option that would be available conceivably is whether there in fact is physical changes that will occur in the facility in the Chicago area so that some of those changes must be addressed through the provisions of pending projects, but it really doesn't provide for any sort of transfer of baseline emissions from outside the non-attainment area into the

non-attainment area.

It would simply be a determination that because of changes that are ongoing at that facility in the Chicago area, we have to accommodate a pending project.

MS. FAUR: Just a follow-up, if based on the results of -- of OTAG's results or USEPA's policy on use of emission reductions in an attainment area -- in a non-attainment area, could this program be then changed or revised to include this?

MR. ROMAINE: The program can certainly be revised at some point in time, but that's all very speculative in terms of what would ultimately be allowed by USEPA. I'm not sure that they are going to be that lenient about allowing credits from outside non-attainment areas. It would also have implications for how the program deals with the offset.

If those type of emissions reductions might not be capable of being used as emission offsets, we might have to come up with some other provisions in the trading program at that point to properly distinguish between

reductions inside the non-attainment area and reductions outside the non-attainment area.

MS. FAUR: That leads into the next question, which is question 3. A company has two facilities, one within the Chicago non-attainment area and another facility more than 100 kilometers upwind of the Chicago area. If the company were to consolidate operations into the non-attainment area from the upwind facility, could the source in the non-attainment area include emissions from the upwind source in its baseline, provided that OTAG's findings or other accepted modeling demonstrated that there was an impact from the upwind facility on the Chicago area?

MR. ROMAINE: As I said, that's not the scope of the current proposal. That's future, and you can only speculate what would be done in the future rulemaking after those changes occur.

MS. FAUR: Question B, which I assume the answer is going to be that it's speculative. Would the emissions from the upwind source be credited to the facility in the non-attainment area using a one-to-one ratio? If not, what ratio would be appropriate?

MR. ROMAINE: Who knows what's even necessary, if even possible.

HEARING OFFICER FEINEN: Do you want to go ahead and ask question C, too.

MS. FAUR: Could this upwind source be considered an emission reduction generator under the program?

MR. ROMAINE: Not under the current program.

MS. FAUR: Thanks.

HEARING OFFICER FEINEN: Any follow-ups? We'll move to Mr. Trepanier's questions, No. 13, 14, 15, 16, 27A and B and then some questions from the handwritten portion of his prefiled questions.

MR. TREPANIER: Thank you. Could a facility starting operations after 1999 receive an original allocation of ATUs?

MR. ROMAINE: Yes, if they qualify as a pending project with a construction permit issued prior to January 1st, 1998. I assume you're referring here to adding emission units to a particular facility?

MR. TREPANIER: Would that differ if the

question is referring, as it does, to an entire facility, a facility starting operation? Is it a different answer?

MR. ROMAINE: I don't think so. There's a possible inconsistency that says facilities that don't begin operation till after May 1st, 1999, would receive -- would not receive an allotment of ATUs, but I think the pending project provisions would overrule that subsequent provision. That provision was put in to make it clear that for new sources that come along in the future, they will not receive an allocation of allotments as existing sources.

MR. TREPANIER: What is a pending project?

MR. ROMAINE: A pending project is a project which has received a construction permit prior to January 1st, 1998, but which has not yet been operational for three complete seasons.

MR. TREPANIER: In theory, how long could a project remain pending?

MR. ROMAINE: Well, I guess it depends how you look at it. In terms of the number of seasons or years that project operated, it would

be at most three complete seasons and whatever part of a partial season. So three and a half years. It could be a while before that pending project actually comes into operation.

Conceivably, they would have a year to begin construction under the construction permit. Construction can take two or three years. Then it could take three and a half years so if you add those up, conceivably it would not begin receiving allotments for six or seven years.

MR. TREPANIER: The one year allowed to get the project into construction and the two to three years to actually construct it, are those requirements in the law or regulation?

MR. ROMAINE: No, they are not. The requirement that facilities proceed with construction permit within a fixed period of time is something that is addressed as one of the conditions of construction permits. Our standard conditions generally says that construction has to begin within 12 months for major projects. If the issue is specifically brought to our attention, we may allow 18 months for construction to commence.

The amount of time that the project

will take to be constructed is actually a consequence of what the project is. If it's a straightforward, simple project, construction may only take a couple of months. If it's a more complicated project requiring a lot of fabrication, installation, erection of equipment, then the construction schedule for that project might take a couple of years.

MR. TREPANIER: That construction schedule, is that something that's included in the construction permit?

MR. ROMAINE: That's not our normal practice, no.

MR. TREPANIER: What investment or risk is required to have a project pending?

MR. ROMAINE: One of the provisions again that is reflected in that standard condition is that the source company has to commence construction within a year. Commencement of construction requires that the source either begin actual on-site construction or that they undertake a significant commitment to a project, that they enter into a contract or other binding agreement for actual on-site construction.

So these are things that have been addressed over the years and developed through USEPA policy, a lot of which has been the consequence of specific enforcement actions by USEPA, probably in the 1970 to 1980 time frame where these disagreements between sources and the USEPA were resolved.

MR. TREPANIER: Is there somewhere that you can point me or to the board that would give us an indication on what the rule or the law -- what the rule is regarding how long a project could remain pending and what investment is required?

MR. ROMAINE: Well, in terms of this rule, they have to get a construction permit. They have to commence construction permit pursuant to that permit. That's where these provisions requiring certain activities binding obligations come in. I don't know if those are found in the board's rules except perhaps under part 203. I would have to review those to see if those provisions for commencement of construction have been brought in the board's rules from the federal program.

MR. TREPANIER: I'll go on to question 14. What limit if any exists on when the last original allocation of ATUs to a project pending in 1999 could occur?

MR. ROMAINE: I don't think there is any legal limit. There is simply the practical considerations in terms of the fact the project has to be begun within a certain period of time. They have to construct it consistent with a reasonable construction schedule for that project, and then they can only operate it for three complete seasons before they have to start receiving and operating pursuant to allowance trading units.

MR. TREPANIER: Question 15, is the cap on total emissions known?

MR. ROMAINE: I don't believe it is. A cap on total emissions is something that we will actually be determining as we go through the permitting processes with individual sources, review what they put forward as their baseline emissions and go through the process of deciding whether they're entitled to exclusions or not. Only at that point in time will we come to a much

better definition on what the cap to total emissions will be.

MR. TREPANIER: Question 16, in light of questions 13 to 15, when could the cap last be expanded or raised without further rulemaking?

MR. ROMAINE: Well, in terms of those questions, I guess the way I really look at it is the cap isn't expanding. I look at the cap as shrinking. We know pursuant to the construction permits what the maximum emissions that will ever be authorized for these pending projects will be.

As the pending projects come on line and we see what their actual emissions are, we will know how much further below those potential emissions the projects actually are.

MR. TREPANIER: To clarify, you are saying that every pending project in this construction permit will have a limitation on VOM emissions?

MR. ROMAINE: It should. If it doesn't, it somehow slipped through and will be addressed as part of the initial allocation for that source, to describe what is the nature of the pending project that has been recognized at that source

and what is the potential implications of that pending project for the total baseline emissions and the allotment for that source.

MR. TREPANIER: Further clarification, could one of these pending projects have a LAER type of a restriction where their emissions are based on whatever production level they're able to achieve?

MR. ROMAINE: Well, again I think hypothetically it is, but I'm wondering why the concern is whether that facility would ever have lowest achievable emission rate. Lowest achievable emission rate would in fact -- it was part of a major project, and if a pending project is in fact a major project, it would come into the program having to supply ATU's at the 1.3 to 1 offset ratio.

It also wouldn't be a pending project in a sense. It would have to be beginning to provide those ATUs when it began operation. Where the pending project transition provision allows a pending project to be excused from holding ATUs for three complete seasons, it's really only referring to minor projects that don't

have an offset obligation to satisfy.

MR. TREPANIER: Is it your understanding then that as of January 1st, 1998, the maximum cap will be known?

MR. ROMAINE: I think, no, I don't. We will know pretty closely what the maximum cap would be. The other uncertainty which you touched upon in your earlier questions is the handful of existing sources which are not currently participating sources but at some future time become participating sources. I think that would be the only other uncertainty we have out there in terms of the total cap.

MR. TREPANIER: Going to my last question in this section, and that's on my last page of questions, pre-submitted questions handwritten.

HEARING OFFICER FEINEN: Question 27A and B?

MR. TREPANIER: Thank you. I missed that. Question 27A, when a new unit or modification that was a pending project emits VOCs after 1999, how long until the source is required to hold ATUs for the associated emissions?

MR. ROMAINE: If it's not a major project, just a minor pending project, if that's the case, the source will have to begin holding ATU for that pending project after the project has been operational for three complete seasons.

MR. TREPANIER: Part B, won't this allow emissions to exceed the 1999 cap?

MR. ROMAINE: I don't think so. As Dick has said, he's accounted for growth in emissions as part of his current evaluation of the need for 12 percent reduction in emissions. The 12 percent calculation goes beyond the 9 percent that we need to achieve RFP so we have some provisions in the proposal, both how it's set up for 12 percent and how it's been evaluated that we believe have adequately accounted for pending projects.

MR. TREPANIER: I understand that my questions regarding accounting for the growth have been deferred to later on. I will go on to the handwritten questions on the last page of my pre-submitted questions.

What assurance is there that the target level of VOM emissions from point sources will be met if the cap is not known?

HEARING OFFICER FEINEN: If the question -- I don't know if this really goes along with the baseline emissions. If it does, go ahead and answer it.

MS. SAWYER: Which question are you asking right now, Mr. Trepanier?

MR. TREPANIER: On the last page, it's the third to the last question on that page.

MS. SAWYER: "What assurance," is that the one you are asking?

MR. TREPANIER: Yes.

MS. SAWYER: I think those questions were ones we had put in the later section.

HEARING OFFICER FEINEN: Question 11 is how does the rule -- is that we interpret the rule as being the baseline emissions operate to establish a cap? Is that how the agency is interpreting Mr. Trepanier's question, No. 11?

MS. SAWYER: Yes.

MR. TREPANIER: I'll ask that question. How does the rule operate to establish the cap?

MR. ROMAINE: Well, the rule sets forth a process whereby sources will submit ERMS applications. Those ERMS applications work

through the information to a source's baseline emissions. Then the rule further provides how those baseline emissions will or will not be further reduced depending upon whether a particular emission unit qualifies for exclusion. So what the rule does, it sets up a process whereby this total cap on the pool of emissions is established.

HEARING OFFICER FEINEN: Any follow-up to that question?

MS. MIHELIC: You stated earlier about the pending project. You kept saying if it was a minor pending project. What if you construct a new facility, you get a construction permit issued before January of next year and it's a major project, a major facility, would you still get ATUs for that project?

MR. ROMAINE: So you're describing a situation where a source will have had to provide offsets in order to obtain a construction permit?

MS. MIHELIC: Uh-huh.

MR. ROMAINE: I think that source would qualify as a pending project, but we would not expect it to get two shots at the apple. We would

expect it to either get its allotment based on being a pending project or to get an allotment based on the offsets that it's provided.

MS. MIHELIC: Could you explain that a little bit. I didn't understand what you mean by offsets based on what's provided.

MR. ROMAINE: Let me consult with them.

(Conference off the record.)

MR. ROMAINE: In most cases I think I would expect that the offsets that would be provided for such a source that would be recognized in January or its construction permit issued by January 1st, 1998, would in fact qualify as ERGs. So it's quite possible that there would be a mechanism that those offsets could be directly recognized through the ERG process.

I don't think we've closed that loophole, if it is a loophole. So the question I think you may have raised perhaps an inconsistency where perhaps we have defined something as a pending project where in fact they should be providing offsets up front, and they should not get to double dip and then again be treated as a pending project.

MS. MIHELIC: Let me try and ask a clarifying question here. I'm a facility who is existing, and I have a pending project coming in that I'm going to construct a new source of, let's say, 30 tons. I provide 1.3 to 1 offsets. Can anybody do the math? So I would have to provide 30 some tons of offsets for that, 1.3 to 1, 40? 30 tons of offsets, correct, is that what you're saying? In this construction permit, you would require them to show they have 40 tons of offsets somewhere?

MR. ROMAINE: That's correct.

MS. MIHELIC: What then would I be getting an allotment for for that new source?

MR. ROMAINE: Can we move on to a further question so I have a longer chance to consult with Bonnie, and go on to the next question. That would be more efficient.

HEARING OFFICER FEINEN: Do you think you'll remember the question for tomorrow morning?

MS. MIHELIC: Sure. The follow-up question would be -- and we can put it on the record, and I'll try to write these down -- would

the source be required to first offset -- it's going to have to come up with 40 tons offset. Is it then going to have its ATU allotment reduced by 12 percent when it gets its allotment, and then would the 40 tons that came from the source be taken away from the allotment if it came from the other emissions at the source?

MR. ROMAINE: Add that to the list of the previous question.

MS. MIHELIC: Okay. I think I can remember this question, and it may go along with the questions we have filed today that you have deferred till tomorrow. We can follow up with those questions there. They've asked us to defer those questions until tomorrow.

HEARING OFFICER FEINEN: Follow-up? Ms. Hodge?

MS. HODGE: I have one more question on Section 205.320. My name is Katherine Hodge, and I'm with the law firm of Hodge & Dwyer here today for the Illinois Environmental Regulatory Group. And I have a somewhat related question relating to baseline emissions determination.

What if a source acquires emission

reduction credits for use as offsets prior to the effective date of the ERMS program and these emission reduction credits were required for a project for which a construction permit will not be issued prior to January 1, 1998, how will these emission reduction credits be incorporated into the source's ERMS baseline?

MR. ROMAINE: This is a circumstance where the source obtained its emission reductions, I guess, prior to 1997 before we get into the trading program?

MS. HODGE: That's correct.

MR. ROMAINE: The only way that we've contemplated that such a source would be able to get credits would be if it gets a construction permit in place by January 1st, 1998. We haven't contemplated a way to recognize those offset credits that were secured prior January 1, 1997.

MS. HODGE: So right now there's no provision in this proposed rule to address this situation?

MR. ROMAINE: No, there isn't.

MR. TREPANIER: I'd like to follow up my earlier question. How does the rule operate to

establish the cap? Your response that there would be applications and then the applications would be used to set the baseline, I thought there was more. From your testimony, you said that it's uncertain that even after these applications are in on what the caps will be. What else beyond these ERMS applications is going to be used to establish the cap?

MR. ROMAINE: Well, where the certainty comes in for the pending projects is whether the total cap will in fact be lower than the potential maximum cap that would ultimately occur if everybody emits at their potential emission level from the pending project.

MR. TREPANIER: On the pending projects, is the potential level known for all pending projects?

MR. ROMAINE: The potential level would be known because they have to have a construction permit in place by January 1st, 1998, at the time they submit their ERMS application.

MR. TREPANIER: And then other emitters might join this program later. Does the rule allow for that? Does that affect the baseline? I

mean, does that affect it when an emitter joins the program a year later, say, in the year 2003?

MR. ROMAINE: Could you clarify what you mean by another emitter joining the program.

MR. TREPANIER: It could be in a situation, as this question came earlier from a representative from Tenneco, that the operation went from one shift to three shifts.

MR. ROMAINE: Yes, there could be some additional growth in the total cap as sources that previously were below the 10-ton per year applicability or 10-ton per season applicability threshold happen to increase their emissions above 10 tons per season.

MR. TREPANIER: Now, is there any other way that the cap could be increased without a further ruling?

MR. ROMAINE: We can't think of any other circumstance where it would change to changes in population of sources where new sources would come into the program.

MR. TREPANIER: Are you addressing that question specifically regarding a change to the cap? I know you just mentioned about new sources

coming in, but are you answering my question?

MR. ROMAINE: One other issue that could occur is if in fact somebody finds a more accurate determination method, it is conceivable that on a case-by-case basis as a result of a new, more accurate determination method, there also might be a revision to the ATU being allocated to a source which could be interpreted as a change to the total cap.

MR. TREPANIER: On this same page, there is one more question that follows this one. I believe that it's on this topic, but I defer to Bonnie if she would want to put that elsewhere.

This is the question that begins, what forecast or analysis is available upon the likely extent of allotments exceeding the 1996 base year in aggregate?

MR. FORBES: I'll answer that, that question. We don't have any forecasts or analysis of the kind that you're asking to predict the likelihood of such an occurrence primarily because the agency doesn't believe that it's a likely possibility for the reasons that we've already stated.

MR. TREPANIER: Maybe if I can clarify. You misunderstood my question. I understand the program allows the emitters to choose their highest polluting years. It's just common sense that when the emitters choose their highest emitting years that we're going to have an average that's higher than the 1996 average. Is it the agency's position that that's not going to happen?

MR. FORBES: Well, in a sense we're chasing our tail because we've said that we don't know what -- you're really asking about the cap. We don't know what the cap is until we actually have baselines determined. The agency's analysis has attempted to use the most available information, the most currently available information in terms of estimating where participating sources are, what their emissions would be, which is based on 1994 annual emission report data.

So to the best of our ability, we believe that the information we provided represents what actual emissions are or currently are and that in the adjustments they are going to

be within the range we've included in our analysis.

MR. TREPANIER: Okay. I'd like to -- I'd like to clarify your position, the agency's position on the likelihood that these allotments, the first allotments that are given out will exceed what the emission levels -- what the actual emission levels are in 1996. I'm looking for to what degree does the agency believe, you know, that these allotments -- the fact that they're allowing emitters to choose their highest polluting years, what does the agency believe that that's going to -- the number of allotments that that's going to allow, how much above what was actually emitted in 1996 is that going to allow?

(Discussion off the record.)

MS. SAWYER: Mr. Trepanier, could you repeat your question.

MR. TREPANIER: The question as written, what forecast or analysis is available upon the likely extent of allotments exceeding the 1996 base year in aggregate? And I could give an example, if that would be of assistance.

MR. FORBES: Well, I think to the best of our understanding of the various provisions of the rule and the fact that actual emissions for baseline determination do have to be adjusted to reflect all of the various 15 percent rate of progress requirements which likely weren't in place when those actual emissions occurred between the early '90s, that that will tend to bring allotments down.

We believe that there is some uncertainty as to what actual adjustment sources we'll see, but in any case, we believe that those emissions cannot exceed what actual existing emissions were at that time period. No specific analysis has been done, to answer your question.

MR. TREPANIER: Could I give an example, and maybe you could address that on this question.

MR. FORBES: I think we've answered your question.

MR. TREPANIER: Maybe if you can apply what you had just told me because you told me a lot, and then you said there was no analysis. I don't know that I understood your answer, but if in the example case, a polluter has a three-year

emission history and they select their first two years and their emissions were at 10 on both of those years, and on the most two recent years, their emissions have been at 8.

Now, in this instance the application of my question would be how much beyond their actual emissions in '96 would they be given allotments?

MR. FORBES: I think, if I understood your example, it would be based on 10. If they made a case that their emissions were representative at that level, I think that's what you said. Their current level was 8, but they indicated that based on the criteria in the rule that it would be 10, then their allotment would be based on 10, but the other adjustments that have to be made there are that if the 10 does not reflect an emission rate that meets the more stringent requirements that apply in 1996 -- and there are many that apply through the 15 percent plan --, then that has to be further adjusted reflective of those tighter emission standards.

So it may not actually be 10. It could be 6 once that adjustment has been made, and

then the other thing that has to be accounted for is if there's any over-compliance. Because of all of these uncertainties, it's not possible to know -- and that goes back to my answer, that a specific analysis has not been made because we don't know what all the choices are that particular source is going to make. We can't be certain as to which year they will use and whether further adjustments have to be made to reflect those tighter emission standards in the 50 percent plans.

MR. TREPANIER: I understand -- and correct me if I'm wrong -- but I understand that in your analysis of this rule, you didn't look in to see -- make up any forecast like, say, on those top 50 emitters or the 8 or 12, how this may work out when the polluters select their most polluting years and how much that's going to be in the aggregate on average greater than what is their actual average emissions on any given year of all the polluters.

MR. FORBES: I think I've answered your question. We didn't do an analysis so I can't add any more to that. Because of the uncertainties

that we've indicated, it's not possible to get an accurate reflection of what the base year emissions would be.

HEARING OFFICER FEINEN: I think right now would probably be a good place to take a break. We're between sections, and we'll come back in 10 minutes. I'm hoping to get to subpart D today. Thanks, let's go off the record for a 10-minute break.

(Recess taken.)

HEARING OFFICER FEINEN: I'll talk real quick about tomorrow. Things are being deferred till tomorrow. So we'll start off the day with those questions. I don't know what would be better, but we'll talk about that tomorrow. Let's not lose sight of the fact that we have a whole day tomorrow of questioning, and it would be nice if we could get through the prefiled questions tomorrow. I don't know if that will be possible, but I would hope that would be the goal, and tonight maybe you can think about what questions have been asked and whether or not you need to ask your questions.

Now I think we can start with

questions on Section 205.330, emissions determination methods, Tenneco.

MR. FORCADE: Question No. 19, how should fugitive emissions be measured in order to be incorporated into the baseline?

MR. ROMAINE: We would expect that fugitive emissions will be determined by practices that are currently being used to determine fugitive emissions. They can be determined, for example, by emission factors or material balances or in some cases there are estimation models that predict emissions based on relevant process parameters.

MR. FORCADE: I then go on to the next section now.

HEARING OFFICER FEINEN: I think Dart Container has a question, No. 12.

MR. NEWCOMB: This has been asked and answered actually even by Tenneco.

HEARING OFFICER FEINEN: Thank you. Let's move on then to Section 205.337, changes in emissions determination methods and sampling, testing, monitoring and record keeping practices. Tenneco questions, 21A, B, C, D and E, 22A, B, C,

D and 23, which reminds me, when you're talking about CAAPP permitting, please refer to it as CAAPP permitting and not just CAAPP so the court reporter can keep track on cap on air emissions and CAAPP permitting. Thank you.

MR. FORCADE: This is question No. 20 on page 11 relating to changes in emission determination methods.

If under Section 205.337(b) the agency agrees to change a facility's permit to incorporate a change in the emissions determination methods, will the agency also adjust the facility's baseline?

MR. ROMAINE: This would have to be considered on a case-by-case basis during the permitting process while that modification is being reviewed. Certainly if the new method is significantly different, it might require that there be an adjusted baseline.

HEARING OFFICER FEINEN: Could I ask a quick follow-up to that? When you're reviewing the modification, what kind of criteria are you going to be looking at to accept or deny?

MR. ROMAINE: You're asking what

criteria we'd look at in terms of accepting a proposed change determination method?

HEARING OFFICER FEINEN: Yes.

MR. ROMAINE: As stated in that section, there are three circumstances that we thought of. One, that a change in determination method is necessary to address some manner of change and operation of a source that hadn't been properly addressed up front.

The next circumstances, if there's some relatively minor change that doesn't really affect the overall determination method so it still provides reasonably good, accurate data, and the final circumstance if in fact the new method provides better, more accurate data.

HEARING OFFICER FEINEN: Is that section -- is that decision of the agency appealable?

MR. ROMAINE: It certainly would be. It would be part of a permit modification so any action that we finally take would be appealable.

HEARING OFFICER FEINEN: Thank you.

MR. FORCADE: Question No. 21, assume that the United States Environmental Protection

Agency has changed an emissions determination method for a particular source based on better understanding of the source. Based on this change, for example, a new emissions factor, a facility now discovers that it has past actual emissions -- that past actual emissions always have been underestimated and that it has more emissions than were originally calculated for the baseline years, even though the process, operations and real emissions have never changed.

Will the agency readjust the facility's baseline? If yes, what is the procedure for doing so?

MR. ROMAINE: Certainly that possibility exists. It would be evaluated on a case-by-case basis if and when we processed a permit modification that would allow or recognize that new determination method that USEPA has come up with. Any change would occur in the context of the permitting. If the permit was never changed, we would simply state where we were, the status quo.

MR. FORCADE: If I could explore that just a bit further. I believe when it comes to

our case, we'll try and provide some information that calculating emissions is sometimes quite difficult and the values change. You say that if indeed a facility, by simply changing an emissions factor pursuant to USEPA, that you might change the baseline, but you haven't provided guidances as to when you would and when you would not, and this could represent a rather significant change in the number of ATUs that a facility might have to purchase or other changes.

Could you expand a little bit on what conditions would have to exist in order for you to change the emissions baseline if you knew that the historic emissions and the present emissions were the same, it was only the quantification methodology that had changed?

MR. ROMAINE: I think that's the point that we're getting to. If the emissions haven't changed, then the goal would be to keep the allocations to accurately and properly reflect what those emissions are as most accurately understood.

We wouldn't want to simply perpetuate the old emission estimation method and

the inaccurate data, if in fact that is inaccurate data so a source is entitled to more ATUs because it was in fact emitting more, and its baseline emissions should reflect that and its allocation should reflect that.

MR. FORCADE: Pursuing that just a little bit further, if I might. Assume that happened in the second or third year of operation of the ERMS program, would the facility have to go back and repurchase additional old ATUs to cover the increased emissions?

MR. ROMAINE: No. The way we've set up the program, as I've said, everything is status quo until the permit actually changes. So any change in this would only occur after there is a detailed application for revision submitted. It would be opportunity for review and input by us, the affected source and the public, and opportunity for review by the board if it was deemed appropriate.

If the source had in fact had sufficient ATUs in previous seasons consistent with whatever methodology specified in the permit for determination of emissions, the source would

satisfy its obligations for those previous seasons. So we're only talking about future changes to the way a particular source is handled once the permit modification is in fact effective.

MR. FORCADE: Where the method of emissions determination is premised on internal data accumulation and it changes, is the facility required to submit any additional information to the agency to justify the change in emissions estimation methodology, and if so, what information?

MR. ROMAINE: Well, they certainly would be required to submit appropriate information to justify the revision to the Title V permit. So it would be an application for revised Title V permit as that is addressed by the Title V program. What we would need is in fact information to flesh out a new determination method and figure out what its implications are for both future emissions from the particular emission units and what its implications would be for the baseline emissions of the facility.

If we didn't have that information, we would not be in a position to properly revise

the permit, and I think we would simply have to stay where we were.

MR. FORCADE: Will the agency account for the changed emissions factor in any other way?

MR. ROMAINE: Yes, and if in fact this changes what we believe to be the total emissions in the area and what reductions we're getting, if change is significant, it might require us to update or revise our rate of progress demonstration.

MR. FORCADE: Going to question 22, if in the above question the new emissions factor causes a decrease in seasonal emissions, will the agency adjust the facility's baseline?

MR. ROMAINE: Similar answer, it would have to be evaluated on a case-by-case basis.

MR. FORCADE: And I'm assuming then the answer to B would be the same relating to issuing ATUs for the facility?

MR. ROMAINE: That's correct.

MR. FORCADE: And would the facility continue to receive its prior allotment of ATUs before the change?

MR. ROMAINE: If the decision were made to change the allotment, it would then begin to receive its ATUs based on the new allotment. If the decision were made not to change the allotment or if in fact there were other, I guess, compensating changes, even though where we distributing emissions at the source, there are more emissions at one emission unit than another than previously thought, then the total result is the same, then conceivably there would be a decision there would be no need to actually change the allotment of ATUs at the source.

MR. FORCADE: And question No. 23, will the agency use the same procedure under Section 205.337 to modify methods of determining VOM emissions if the change in emissions determination method is mandated by USEPA or the agency?

MR. ROMAINE: I'm not exactly sure where the question is leading to. The first point is that we don't usually develop new determination methods. We don't come up with new emission factors or formulated estimating emissions. USEPA does that, and then the other thing is I don't see anything as we've set up this rule that provides

that USEPA that can mandate that a source change its emission determination method.

They've sort of provided the ability to change determination methods at the option of the source as needed when new, more accurate determination methods come along or in fact they see some way to improve it or finally if they just need to accommodate new circumstances at the source.

MR. FORCADE: Do you anticipate that USEPA will adopt a compliance assurance monitoring rule and that Illinois will implement it?

MR. ROMAINE: That's two questions. If USEPA adopts a compliance assurance monitoring rule, we will follow it.

MR. FORCADE: Would you assume that if USEPA adopts a compliance assurance monitoring rule that it may require monitoring particular emissions units that would in fact result in a mandated different method of determining emissions that may be present in their Title V permit application or permit?

MR. ROMAINE: That is certainly possible in terms of those applicable requirements. So if

certain applicable requirements exist, USEPA may in fact come up with more refined methods to determine compliance with those requirements. I don't believe those provisions would necessarily transfer over into a trading program of this type where the issue is simply quantification of emissions.

MR. SUTTON: Can I interject. Also, the method they've taken as far as adoption of that rule currently is to put that in at the reopening of the permit versus forcing a reopening. So it may actually go five years before that shows up in a permit.

MR. FORCADE: To short circuit the question then, you see nothing coming out of the compliance assurance monitoring rule which would result in a change between emissions estimations techniques and possible actual monitoring data that would reflect a change in the amount of baseline emission ATUs issued to a facility other than prospectively in the future?

MR. ROMAINE: We agree.

MR. FORCADE: Good.

HEARING OFFICER FEINEN: Moving on then,

Dart Container's questions 13 and 14.

MR. NEWCOMB: Once again, Bill Forcade has done these exact questions. They're identical to the questions that Tenneco brought up so they're withdrawn.

HEARING OFFICER FEINEN: Moving on then to Mr. Trepanier's question No. 25 which seems to be similar to the question that I asked, but feel free if you want to ask it again.

MR. TREPANIER: My question in regards to what will be guiding the agency officials when they're presented with a polluter's proposal to completely retool VOM calculation methodology, and given that there was an answer earlier, if you could just elaborate on your third-party of your response that when a new method would be more accurate.

MR. ROMAINE: Well, one of the goals of the trading program generally stated, a secondary goal perhaps, is to improve the accuracy with which sources determine emissions, that under the current program under the command and control program, there really isn't always a push to come up with the most exact quantification of emissions

if you adequately comply with your initial emission limits.

If you comply with the emission limits, fine. Quantification then becomes a secondary aspect of your operation, but we do want to use the trading program to the extent possible to reward sources if in fact they find out they have more accurate estimates of emissions. So we would try to facilitate through permit modifications more accurate determination methods when they're presented to us.

They require some explanation of why the determination method has changed. Is it a result of plant specific data versus a general emission factor? Is it a result of further evaluation by USEPA? Has there been a detailed technical evaluation to compare a new test method to an older test method and a finding that it is a more consistent method or more accurate method?

So it would be looking for those type of information to show that a particular determination method that a source is new proposing to use more accurately reflects its emissions to the atmosphere, and we would

certainly then, to the extent possible, rely on that determination method as it is a more accurate indicator of what that source's actual contribution is toward air quality.

MR. TREPANIER: If their allotments are changed, they would then receive additional allotments, would those be available for sale immediately, or would the source need to work under their new allotments for three years before they could close and sell all their allotments?

MR. ROMAINE: The new determination would begin to be relied upon immediately, presuming it would not change during the course of the season. I think that would be rather complicated. We would have to set this thing up to identify which season the change occurs. The source could then begin to rely upon the new determination method.

MR. TREPANIER: I might ask one more. Is there anything that you would see that would cause an emitter to come in and ask that they have a new methodology that they believe would reduce the amount of their allotments they received?

MR. ROMAINE: I would think that would

be less likely than the other case, but there might be some circumstance where somebody comes up with an estimation method that shows lower emissions.

MR. TREPANIER: Thank you.

HEARING OFFICER FEINEN: Any other follow-up? I guess we're moving on then to subpart D, seasonal emissions management, Section 205.400, seasonal emissions allotment, Tenneco's questions 24, 25A, B, C, D and E, question 27A and B and question 27A, B, C.

MR. FORCADE: Moving to our questions on page 13 under Section 205.400, question 24, will individual ATUs issued by the agency have some sort of identification such as an identification number, the year of issuance and the expiration date?

MR. KOLAZ: Yes, it will.

MR. FORCADE: We believe question 25 has been asked and answered.

Actually if I could, the very last sentence on subpart E of example 25 involves the relationship between ATUs that have been sold with ATUs that have been retired and would they both

have the same expiration date?

MR. KOLAZ: You're referring to --

MR. FORCADE: This would be question 25, sub E, the very last sentence, will the five tons of ATUs expire on the same date if Facility Q sold the ATUs prior to December 31st, 1999?

MR. KOLAZ: The answer to that is that the actual act of selling the ATUs would not in itself change the expiration date. ATUs issued for the 1999 season will expire at the end of the year 2000 season if they're not retired prior to that time.

MR. FORCADE: Regardless of the sale date?

MR. KOLAZ: Regardless of the sale date.

MR. FORCADE: We believe 26 has been asked and answered, and we believe question 27 has been asked and answered.

HEARING OFFICER FEINEN: We'll proceed with Tenneco's questions under Section 205.405, exclusions from further reductions, Tenneco's questions 28, 29, 30, 31, 32 and 33 and 34.

MR. FORCADE: These relate to questions beginning on page 15 for No. 28 regarding

exclusions for further reductions. Under Section 205.405, consider the following scenario: USEPA develops a MACT standard for industry A in February 1998. Under the MACT standard, USEPA proposes specific numerical emissions controls on emission unit B.

Further, USEPA makes a specific determination that MACT is equivalent to no controls on unit C, and USEPA makes a decision not to propose emission controls on emissions unit D, and I would point out that this hypothetical is in fact the pulp and paper MACT that I'm discussing.

Question No. 1, will VOM emissions from units B, C and D be included in an existing facility's baseline in the ERMS application submitted on January 1st, 1998?

MR. ROMAINE: Yes.

MR. FORCADE: Will the facility be required to submit any additional information after its application? If yes, what information must be submitted?

MR. ROMAINE: I can't say that it wouldn't have to submit additional information if the initial submission is incomplete. However, a

key question here seems to be focused at the MACT exclusion. The question for the MACT exclusion is whether an emission is subject to and meeting a MACT emissions standard established pursuant to Section 112 of the Clean Air Act when the baseline emissions are determined.

So the question is are these emission units meeting MACT standards as of January 1, 1998, when the ERMS application is submitted? If they are and that information is presented in the application, that would be sufficient. If they aren't, then they aren't, and that information would be sufficient.

MR. FORCADE: Assuming that they are meeting the standard, after the existing facility implements MACT for unit B, is it correct that unit B will meet Section 205.405(a)(1)?

MR. ROMAINE: Did you say that these emission units are meeting MACT?

MR. FORCADE: That's my -- after the existing facility implements MACT, after the facility achieves MACT, that unit.

MR. ROMAINE: I guess as you phrased the question, I guess I'm still concerned because

either they meet MACT as of January 1st, 1998, or they don't. There wouldn't be further changes to implement MACT. So if as of January 1st, 1998, they are meeting the MACT standard and that's what's described in the ERMS application, then they would qualify for the exclusion based on compliance with the MACT requirement.

MR. FORCADE: And if they do not but they subsequently come into compliance would they meet the exclusion in 205.405(a)(1)?

MR. ROMAINE: No, they would not.

MR. FORCADE: Why?

MR. ROMAINE: Because the exclusion is determined as of the date of the ERMS application when the emission baseline is evaluated.

MR. FORCADE: And am I correct then that that emission unit would have to have a 12 percent additional reduction in order to qualify for -- I mean, it would receive ATUs representing a 12 percent reduction in emissions?

MR. ROMAINE: That's correct.

MR. FORCADE: After the existing facility implements MACT for unit C where MACT has no controls, is it correct that unit C will meet

Section 205.405(a)(1)?

MR. ROMAINE: The way you presented this example, it appears that you've described unit C as complying with the MACT standard that you stated here that you've made a -- USEPA has made a specific determination that the practices followed by emission unit C constitute MACT. That would mean that emission unit C is complying with MACT as of January 1st, 1998. Accordingly, it would not be set to a 12 percent reduction.

MR. FORCADE: Would that be true even though the MACT standard was not published until February 1998?

MR. ROMAINE: You pose an interesting question there in terms of timing. I don't see anything that would prevent a source from coming in and demonstrating or supplementing their ERMS application and showing that as of January 1st, 1998, they're complying with MACT and supplementing the application with information on the final MACT standard as effective February 1998.

MR. FORCADE: At that point they would be qualifying for exclusion under 205.405(a) and

would not be subject to the 12 percent reduction?

MR. ROMAINE: Well, I guess timing that -- clearly that information could be reflected in the initial baseline determination for that particular unit that would not be relied on some subsequent or future action by USEPA, but that information could be obtained while the application was being reviewed.

MR. FORCADE: After the existing facility implements MACT for unit D where MACT has no controls, is it correct that unit D will meet Section 205.405(a)(1)?

MR. ROMAINE: As you described the circumstances of unit D, you have not described unit D as subject to a MACT requirement. You've said that the USEPA has not done anything in terms of establishing MACT to that particular emission unit. If an emission unit is not subject to and not meeting a MACT standard, then it does not qualify for the exclusion. As you set up the example, a 12 percent reduction from baseline emissions would be required for unit D.

MR. FORCADE: I think you just put your finger on the area of confusion I'm hoping to

explore in these hearings. You addressed the MACT exclusion as though USEPA is always clear and precise and final in all of its actions. In reviewing the MACT regulations, we have not always found that to be quite true. There are a number of times where USEPA does not specifically identify every unit and say, this is a MACT standard. So I'm trying to explore what criteria the agency will use in making determinations for the MACT exclusion.

If I correctly understand you so far, you've said if USEPA puts out a specific numerical limitation, that that would qualify as a MACT standard, and if USEPA puts out a specific narrative statement in the preamble to the effect that MACT is equivalent to no controls, that that would also constitute a MACT standard. Is there some lesser statement that would also qualify or a conclusion that that represents a MACT control, and therefore, the exclusion 205.405?

MR. ROMAINE: Well, I think you've answered the question in part that USEPA, if they are in fact unclear exactly what they're doing in a MACT rulemaking, may in fact leave room for some

case-by-case evaluation whether in fact a particular emission unit is subject to MACT and emission standards comply with that MACT emission standard, and that would have to be evaluated and reviewed as part of the evaluation of the ERMS application.

MR. FORCADE: Following up on that last question where you determine that it does not constitute RACT, and therefore, there is a 12 percent reduction, would that not yield an ERMS program that is more restrictive than RACT for that particular unit -- I'm sorry, excuse me, more restrictive than MACT for that particular unit?

MR. ROMAINE: I guess I will back up and say I wasn't saying that the unit wasn't subject to MACT. The way you've described the situation to me, you've described it as if USEPA has not proposed MACT for a particular emission unit. If you're going to tell me it is subject to meeting MACT, it would qualify for the exclusion. If there's no MACT, I don't see how it could be more stringent than MACT.

MR. FORCADE: Am I correct that MACT represents a categorical standard and subjects the

facility to all emission limitations for that category of emissions grouping?

MR. ROMAINE: MACT is certainly a categorical standard. Within categories, USEPA has quite often allowed a menu of options to comply with the MACT requirement. A source has to fully comply with a particular menu or choices that it's decided to go for.

MR. FORCADE: Question No. 29, continuing the above example, USEPA does not develop a MACT standard until the year 2005. Before MACT is developed for unit B, unit B's baseline emissions are 100 tons per season. After MACT is implemented for the facility to achieve compliance, how many ATUs will the facility receive for unit B, 100 tons of ATUs or 88 tons of ATUs?

MR. ROMAINE: As you've set up this example, this source would never receive 100 tons of ATUs. Beginning in the 1999 season, it would begin receiving 88 tons of ATUs for unit B. This is because there is no MACT standard until the year 2005. Clearly it could not qualify for a MACT exclusion if the MACT standard isn't

developed in the year 2005.

Since its baseline is already set, the adoption of a MACT standard in the year 2005 doesn't change anything, if this source were to continue to receive 88 tons worth of ATUs for unit B before 2005 and after 2005.

MR. FORCADE: Moving on to subsection C, before MACT is developed for unit D, unit D's baseline emissions are 100 tons per season. After MACT is developed and implemented, how many ATUs will the facility receive for unit D, 100 tons of ATUs or 88 tons of ATUs? And I would remind you that unit D is the one where USEPA makes a specific determination that MACT equals no controls.

MR. ROMAINE: That was unit C.

MR. FORCADE: No, I'm moving on to question C.

MR. SUTTON: Wasn't unit E the one?

MR. FORCADE: I'm sorry, yeah, unit C. I apologize.

MS. MC FAWN: You want to ask question B, is that right?

MR. FORCADE: Oh, yeah, B. I'm sorry, I

skipped down too many. My apologies.

MR. ROMAINE: As I said, we're dealing with something that's occurring in 2005. Circumstances in 2005 don't change the initial allotment, and as described here, the source's initial allotment would be 88 and would continue to be 88.

MR. FORCADE: And in that case even though USEPA has made a determination that MACT equals no control, would it be correct to say that the ERMS program is more restrictive than MACT for that unit?

MR. SUTTON: I would like to point out the intent of the MACT program on the federal level is to control toxics, not necessarily VOMs.

MR. FORCADE: I'm going to suggest that this is a VOM which is also a HAP.

MR. ROMAINE: I guess I can't draw that conclusion. In one case we're looking at the effect of the ERMS program to achieve the rate of progress requirements in 1998 -- I guess 1999. We're looking at whether MACT can be factored into that determination as part of the application in 1998. It can't be. It would appear the

circumstance that you're looking at here is something where you think this is a very well controlled emission unit.

Since we can't rely on MACT in the 1998 time frame, what is necessary here is for this source to pursue exclusion based on best available technology. Best available technology would be an option that could be applied and at this period of time to avoid having to make that 12 percent reduction. In that sense I guess I'm not in a position to make any sort of broad conclusions that the trading program is more or less stringent than MACT in this particular case.

This source can show BAT, best available technology, when it comes in for its application, and all the answers I've given you change around. Even though it wouldn't qualify for the MACT exclusion, all these units would make the best available technology exclusion, and none of them would have to provide reduction and have 100 ATUs going into the system and continuing on.

MR. FORCADE: I believe we answered the question No. C relating to unit D where you said that if a -- if USEPA has deferred adopting a

particular standard that that would not constitute RACT, is that correct?

MR. ROMAINE: That's correct.

MR. FORCADE: For example D, if an existing facility in industry A implements MACT for the entire facility, is it true that the entire facility will not be subject to the 12 percent emissions reduction?

MR. ROMAINE: Yes, providing that the timing requirements are satisfied that it is in fact meeting MACT as of 1998 when the baseline determination is made.

MR. SUTTON: Be careful how you answer that, Chris, because this is in this context of something happening in 2005. So if it occurs in 2005 --

MR. FORCADE: This was a subsection of the question started in subsection 5.

MR. SUTTON: You have to rethink your answer.

MR. ROMAINE: Well, I'm rethinking my answer. It would not have any effect if the facility does not begin implementing MACT for the entire facility in 2005. In order to qualify for

the exclusion, it would have to show it has MACT as of the time frame of the initial baseline determination, or alternatively, that it has best available technology.

MR. FORCADE: To reiterate, if there is a standard adopted in 2005 such as no controls which the facility in 2005 can show it was meeting in 1998, would that facility be or that unit be subject to ATUs being increased under 205.405?

MR. ROMAINE: Not with any provisions to increase the allotment to the sources in those circumstances.

MR. FORCADE: If you don't make the demonstration in your 1998 application, you don't get it?

MR. ROMAINE: That's correct.

MR. FORCADE: Question No. 30, referring to Section 205.405(1), assume that a facility has operations that emit hazardous air pollutants which are VOM. MACT requires capture and control of 98 percent of the emissions. If a similar facility is not subject to MACT because it does not emit hazardous air pollutants but meets the 98 percent standard, will this facility be required

to reduce emissions by 12 percent under the ERMS?

MR. ROMAINE: It would not qualify for the MACT exclusion. You've suggested here that this facility has a very high level of control. I would suggest that you would want to pursue the best available technology exemption and use that route to try and be excluded from the further reduction of 12 percent. I can't say at this point whether it would qualify or not.

MR. FORCADE: Referring to Section 205.405 (b) and (d) and the definition of best available technology in Section 205.130, what is the source of the agency's definition for BAT?

MR. ROMAINE: The definition of BAT is developed from the definition of best available control technology for the Federal Prevention of Significant Deterioration Program. That definition is found in section 169.3 of the Clean Air Act as well as the Federal Prevention of Significant Deterioration rules.

MS. MC FAWN: I'm sorry?

MR. ROMAINE: That is the source. It has been adapted, however, to become a new term, best available technology for the specific

purposes of trading program.

MS. MC FAWN: Let me just note that he's on question 31.

MR. FORCADE: Oh, yes, I'm sorry, I'm on 31. Is BAT a new standard and unique in Illinois?

MR. ROMAINE: Yes, it is.

MR. FORCADE: Under the Clean Air Act, MACT is the level of control of emissions from the top 12 percent of controlled sources. Is BAT less stringent or more stringent than MACT?

MS. SAWYER: We did go through and answer all these questions the other day.

MR. FORCADE: Well, if I could for just a second, the answers that I received during the earlier questions were that, well, generally BAT would be here and BAT would be there. That had enough wiggle room that I wasn't quite sure where I was going, and I think I need to explore whether, as I address these questions, BAT will always be less stringent or more stringent than those, and if not, when would it not be?

That question was not asked in the earlier round of questions. Since this is a

fundamentally new technological standard which no one can really define or point me to an existing example of, I think it is appropriate to explore it in some detail because it is a relatively significant term, and I would ask the liberty to ask these questions again because it is a new and unique standard that you're asking the board to adopt.

HEARING OFFICER FEINEN: Mr. Romaine, are you prepared to answer those questions?

MR. ROMAINE: Yes.

MR. FORCADE: Under the Clean Air Act, MACT is the level of control of emissions for the top 12 percent of controlled sources. Is BAT less stringent or more stringent than MACT?

MR. ROMAINE: Before answering the question, I need to check my Clean Air Act to make sure that MACT is the level of control of emissions from the top 12 percent of controlled sources. I think you're probably condensing some things.

MR. FORCADE: Yes, there's also an exclusion that says where there's less than a certain number of sources, it's --

HEARING OFFICER FEINEN: Let's go off the record for a second.

(Discussion off the record.)

HEARING OFFICER FEINEN: Let's go back on the record.

MR. ROMAINE: I apologize. I do not keep the provisions in my head, and this is actually part of the language that defines MACT for existing sources. This isn't the complete description of MACT for new and existing sources. In fact, though, what the Clean Air Act says is that MACT shall be no less stringent.

What this language about 12 percent for these various provisions really have to do with something called the MACT floor or in some cases the MACT ceiling, but it's something that by statute is the upper bound, and MACT, as determined for category, is to be as stringent or more stringent than this upper bound.

That behind me, I guess in the previous discussion, I tried to describe these series of emission limits as a continuum. I did not try to make a distinction between control of volatile organic material versus control of

hazardous air pollutants. I was trying to answer them abstractly for a particular pollutant which level of control is most stringent, next most stringent in sequence.

I think the key point in evaluating MACT is that MACT is an emission standard determined by rulemaking for a category of sources, a category of emission. I think that inherently means that MACT has more flexibility in it to accommodate a range of different emission units with a range of different control levels, and it says here MACT, for existing units if you have sufficient sources, is not the top one percent, not the top two percent.

So accordingly, I would say that BAT would inherently be more stringent than MACT because BAT is a determination that is made for one emission unit, and a case-by-case determination for that one emission unit is evaluating what is the maximum level of emission reduction that is specifically achievable for that emission unit. That presumes, however, that in this continuum for particular emission units, there are significant differences.

I think I said before you may be dealing with a particular emission unit where all these different emission levels get very compacted, and it is hard to separate perhaps any distinction between what might be considered MACT and best available technology or best available control technology or in fact lowest achievable emission rate. Everybody seems to coalesce and say it's 99 and a half percent control and total enclosure.

MR. FORCADE: Well, I appreciate that. Would you mind if I explored it a little bit more because I'm still utterly confused as to what BAT represents.

Assuming you had a paper coating line -- standard paper coating line and you were to survey the paper coating lines in Illinois to see what level of technology they had imposed, and if you determine that your emissions unit met the emissions control that the top 12 percent, 6 percent and 3 percent respectively of a controlled sources met, could you tell me which of those would meet MACT or BAT and which would not?

MR. ROMAINE: No.

MR. FORCADE: Okay. I guess I'll move on to the next question.

MR. ROMAINE: The BAT does not have a ceiling. There is nothing that says that BAT has to be at least as stringent as the top 12 percent of best performing sources, the top 50 percent of performing sources. BAT is a case-by-case determination.

MR. FORCADE: I can understand that. The concern I'm having is you're asking the board to adopt a standard. I'm trying to explore so that the board will be informed precisely what that standard means. When I ask you questions, does it mean this, that or that, and you say no, then I don't know how effectively to either support or oppose the adoption of BAT in public comments because I don't know what it means or what I'm being asked to support or oppose.

So I'm simply trying to explore this, and if you can give me additional guidance, it will be very helpful for me, but I will move on to the next question attempting to ferret the lowest achievable emission rate, if we could.

Is BAT less stringent or more

stringent than the lowest achievable emission rate?

MR. ROMAINE: Looking at the continuum, BAT would definitely be considered less stringent than the lowest achievable emission rate.

MR. FORCADE: Would it be safe then if a facility went to the RACT, BACT, LAER clearinghouse and found a recent LAER decision for its type of operations that it would have a high probability that similar controls would achieve BAT in Illinois?

MR. ROMAINE: Yes, and I highlight two points you made, similar emission unit, recent determination.

MR. FORCADE: Yes. Question D, is BAT less stringent or more stringent than RACT?

MR. ROMAINE: BAT is certainly more stringent than RACT.

MR. FORCADE: Is B --

MR. ROMAINE: RACT is a categorical standard. It is not a case-by-case determination.

MR. FORCADE: Is BAT less stringent or more stringent than best available control technology?

MR. ROMAINE: I think this is the level of control that BAT comes closest to, but I think it is slightly -- in this continuum it would be considered less stringent.

MR. FORCADE: BAT would be considered less stringent, is that correct?

MR. ROMAINE: That's correct.

MR. FORCADE: Would it be considered less stringent in all circumstances?

MR. ROMAINE: Again we're talking about hypothetical situations. So if you have a BACT determination for a particular unit and now you have a BAT determination for that same unit, I would think that the BAT information would be at most the same level of BACT or less stringent.

MR. FORCADE: What is the economic limit for best available technology in the economic consideration?

MR. ROMAINE: We consider that the appropriate economic, I guess, yardstick for the availability of control measures is really the $10,000 per ton cost that we've put in for the ACMA.

MR. FORCADE: Therefore, would it be

correct to say that if an applicant submitted control technology to you that was at the $10,000 per ton level or higher and you agreed with that analysis, that that unit would constitute BAT in your opinion?

MR. ROMAINE: That's certainly a strong possibility. Going through, I guess, reviewing the other factors, the question is, first of all, are there a similar emission units out there that is in fact doing more to control emissions that should be relied upon as precedent. I assume that in the example that you presented to us there would be no other similar emission unit. The other thing I'm assuming is that this unit always is very well controlled so that further control measures would in fact entail something at or above the cost that we've set for the ACMA, and that, as you said, we've agreed with that economic evaluation that it is in fact a standard evaluation of costs as we performed for evaluation control measures.

MR. FORCADE: Will BAT in all cases apply standards that are equal to or more stringent than new source performance standards

established under Section 111 of the Clean Air Act?

MR. ROMAINE: Not necessarily. The new source performance standard only applies to newer modified emission units. If an emission unit in fact is subject to a new source performance standard, it would, of course, have to meet that emission standard. If in fact an emission unit is existing so it's not subject to the new source performance standard, then that would not be a relevant standard for that particular situation.

MR. FORCADE: In that situation what floor will be used for sources which are not controlled by any standard?

MR. ROMAINE: The best available technology definition does not include a floor or a ceiling provision for existing sources or existing emission units of that type.

MR. FORCADE: Is it possible that best available technology for an existing source could equal no controls?

MR. ROMAINE: That's certainly possible.

MR. FORCADE: What circumstances would have to exist for that to occur?

MS. SAWYER: Could you be a little bit more specific on that question. What circumstances, that's probably too broad. I don't think Chris can comment on that.

MR. FORCADE: What economic cost and availability and technical impediments would have to exist for the agency to support a conclusion that best available technology for an existing operational unit was equivalent to no controls?

MR. ROMAINE: The evaluation of best available technology does include consideration of both process measures and add-on control measures. So we would have to have gone through an evaluation that concludes that no further process measures could be applied to that emission unit but other emission units are not using greater, more effective process measures, and that looking at the level of emissions that then is being achieved with the process measures that are being used, that add-on control is not being used by other similar sources and that add-on control would impose costs that would be discussed at or above the level associated with purchasing of ATUs from the ACMA, the yardstick we've come up as

evaluating economic impact.

MR. FORCADE: You injected something there about purchasing from the ACMA. Is that different than $10,000 a ton that you were using as a benchmark?

MR. ROMAINE: Well, the point I was trying to make, when you do come down looking at costs and best available control technology evaluation or best available technology demonstration is that you need something to compare them to, and it is difficult to come up with specific numbers.

What we have established in this program is an alternative way to obtain allowance trading units, and that is the ACMA. So we would certainly consider the ACMA as something that compares the other alternative in lieu of having to put in further control measures. So the ACMA really becomes the economic yardstick to evaluate economic impacts of possible controls.

MR. FORCADE: Am I correct that under the ACMA, the cost of ATUs will be either twice the market average or $10,000 a ton?

MR. ROMAINE: Yes. However, we're

talking about making initial determinations for best available control technology. At the time the baseline determination is made, provisions in the ACMA dealing with cost of ATUs based on market prices would not be available when these determinations are being made.

MR. FORCADE: It would be $10,000?

MR. ROMAINE: That would be the magnitude we would be looking at, yes.

MR. FORCADE: In its statement of reasons, the agency states that in determining BAT, it, "will consider existing features of the emissions unit." What factors will the agency consider? And this is subsection I of question 31 on page 18.

MR. ROMAINE: We would consider the existing features that affect making changes to that emission unit to further control emissions so we could look at the existing space constraints, the existing configuration of equipment. We look at other related processes that would be present at the source that might have to be changed or upgraded.

In terms of add-on control, we

would look at similar issues in terms of how does the site location affect the ability to put new measures in place, what additional steps would be required, if necessary, to change the structure of the facility to support controls? We would be looking at any existing features of that emission unit that would affect the ability to further control emissions.

MR. FORCADE: Question No. 32, in its statement of reasons, the agency states that, "in no event shall application of BAT result in emissions of VOM which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 of the Clean Air Act" -- I'm omitting some here -- "or the level of emissions achieved in practice by the best controlled similar new units." The second phrase is not found in the definition of BAT in 205.130.

Is the phrase, "the level of emissions control achieved in practice by the best controlled similar new units," from the above quotation the agency's interpretation of the meaning of BAT as defined in Section 205.130?

MR. ROMAINE: No, it is not. Apparently

when that portion of the statement of reasons was being prepared, somebody inadvertently looked at a previous draft of the proposal that included that language. At one point in time, we were pursuing putting a ceiling into the best available technology definition. We have, however, dropped it out of our proposal so that is simply a mistake.

MR. FORCADE: I think that answers question B, but I would like to explore in question C, "the level of emissions control achieved in practice by the best controlled similar new units." Exploring in the final section of this question, what number of similar units do you believe would have to exist before you would consider a technology to represent something less than BAT?

MR. ROMAINE: Can you repeat the question, please.

MR. FORCADE: Assuming you have an emissions unit, 100 of them across the United States, and the most stringent control is employed by only one unit or two units or five units or fifty units. At what level does the number of

controlled sources become so large that the technology would not represent best available technology?

MR. ROMAINE: Again I'm having trouble structuring my response to the way you've posed the question. We do not have a mandatory comparison to any particular number of units. We have said, though, that if there is a similar unit out there that is using more effective control measures, a combination of processes or add-on control, then that would be a means to say that a particular emission unit does not have best available technology.

The key point then is what is considered similar. So you would have to look at is that other unit that has more control newer, larger? Was it developed at a later period of time where additional controls were available that were not available when the emission unit that's being evaluated was considered? So if you go to that evaluation and conclude it wasn't similar, then that would not be a binding precedent.

But if we come up with a precedent out there that shows a similar unit in similar

circumstances has better control, then we would not deem the emission in question to have the best available technology. It would have to equal or better than other similar emission units, assuming in fact there is one, and assuming that in fact other emission units have reasonably been identified.

MR. FORCADE: So am I correct then if there is one unit in the world that is similar and is controlling this, that you will not assign BAT to a less stringent control technology?

MR. ROMAINE: I think we've also said that we had not planned to go outside the Continental US. That's enough to worry about.

MR. FORCADE: If there was one in the United States employing that technology even though hundreds of others do not, the only BAT determination you would support would be that one level of control?

MR. ROMAINE: That is correct. It is a similar emission unit; similar emission unit, same size, same circumstances is doing better, then we would say there's no reason why the particular emission unit at hand shouldn't achieve that more

stringent level of control, but again, it depends on is it similar. So we wouldn't necessarily say that single unit by itself is sufficient. If it's a similar unit, then why not.

MR. FORCADE: Assuming that factual scenario, what kind of economic showing would the applicant need to make to convince you that a lower standard would satisfy BAT? If there were two similar units but the one that was controlled was the only unit in the United States, there were hundreds of uncontrolled units, what kind of economic showing would the applicant have to make?

MR. ROMAINE: As we have set this up, there wouldn't be an economic showing that the source could make. If it's similar, it's been done. Now, if you're telling me that their circumstances are different so that there are different economic impacts, then it's not similar.

We would have to go to the economic evaluation to see whether in fact that particular level of control that is being used by this other comparable but not exactly similar emission unit

could also be applied and should be considered achievable for the emission unit at hand.

MR. FORCADE: Would that hold true if the single unit that was constructed in the United States with that technology was expending substantially in excess of $10,000 per ton?

MR. ROMAINE: There's nothing that we've set up in this proposal that would preclude that being a justification to say that in fact that other similar unit should not be considered as definitive for setting the best available technology.

MR. FORCADE: And the lower standard might apply because it was in excess of $10,000?

MR. ROMAINE: That's correct.

HEARING OFFICER FEINEN: I think we have some follow-up to your questioning, and I think we're going to stop today. I know we're going to stop today.

MS. HODGE: Chris, you talked about similar sources and different circumstances. Wouldn't you agree that one facility, perhaps the one employing this new technology, is a brand new facility; an existing facility was constructed

several years ago with maybe somewhat less efficient control equipment, wouldn't you agree that that would be different circumstances that the agency would consider in its BAT determination?

MR. ROMAINE: It certainly would be. Those could not be construed as similar emission units. There are very specific differences that you set up in terms of the timing of those two, of the development and construction of the two emission units.

MS. HODGE: Thank you.

MR. SAINES: Thing is along the same lines. My understanding of that definition is that part of the determination -- case-by-case determination will take into account economic factors. So I guess for purposes of clarification, in making the determination whether or not a unit is similar or not, isn't economics of the particular unit something that the agency is going to consider in terms of whether or not it is actually similar, and you can then compare it to that one source that's out there that's installing controls?

MR. ROMAINE: I think you've described a circumstance where it appears that even though there may be superficial similarities between emission units that in fact you believe that there are differences between the two emission units. Presumably one way to evaluate those differences would be to do an economic of the impact of cost of control, and that would highlight why those two emission units that might superficially be considered similar should really be considered different, and accordingly, wouldn't rely on one as a precedent for the other.

My attorneys also pointed out that I may have appeared to suggest that simply a cost of $10,000 would be sufficient, that is, the exact ACMA cost would be sufficient to avoid for the controls or to show that best available technology is being satisfied. That was not my intent. My intent was simply to show that is the point we could look at. The cost, of course, would have to be more expensive than ACMA because otherwise people would go to the ACMA to fulfill their emission obligation. So it's greater than ACMA.

MR. SAINES: One additional follow-up

question. It relates to your characterization of BAT being more stringent than M-A-C-T or MACT. One of the justifications you used to make that statement was that BAT determinations are made on a case-by-case basis rather than on a categorical basis.

My understanding -- that doesn't necessarily follow then that BAT will be more stringent than MACT. I'm concerned that through these questionings, it's sort of been suggested that it is more stringent than MACT in every case. I would think that a case-by-case determination would yield situations where BAT could in fact be less stringent than MACT in a given instance. Wouldn't that be -- isn't that true when you consider economics as well?

MR. ROMAINE: I guess the point I was trying to make was that because BAT is a case-by-case determination, it should be a more accurate determination of what is achievable in terms of the emission reductions; that certainly under a MACT standard, there may be emission units that could do much better than the MACT standard due to their particular circumstances, but MACT

does not require those emission units to do better.

It simply says, here's the general. If you do well enough at this level, that's good enough, you've met the general categorical requirement. You could perhaps come up with a scenario where the way MACT is established creates a very stringent standard for a particular emission unit; that one that in fact has exorbitant costs for that particular emission unit just because of where it is as sort of an outlyer for the entire category, but the way the USEPA has set up that categorical rulemaking, they set up a MACT standard that doesn't really fit it. I think that would be an exception to what I was trying to describe in a conceptual approach as to how you would spread out these different emission standards under a continuum.

MR. SAINES: But it is possible that BAT could be considered less stringent in a given situation?

MR. ROMAINE: Conceivably such a circumstance might exist.

MR. SAINES: Thank you.

HEARING OFFICER FEINEN: Okay. I think we'll stop here today and continue tomorrow. I just want to let everyone know that the dates that we're tentatively looking at now for hearings is April 21st, 22nd, 23rd and 24th, but of course, after this hearing and before tomorrow, hopefully we'll have a better -- after today's hearing and tomorrow, we'll hopefully have a better target or a higher percentage surety that that's going to be the day.

MR. FORCADE: Are we off the record?

HEARING OFFICER FEINEN: No. We'll continue tomorrow, and if there's some questions deferred, that we'll start with, and I think we'll go back to questioning from Tenneco. Off the record, please.

(Discussion off the record.)

(Whereupon, this hearing was continued until February 11, 1997, at 9:00 o'clock a.m.)

STATE OF ILLINOIS )
) SS:
COUNTY OF COOK )

LISA H. BREITER, CSR, RPR, CRR, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; that she reported in shorthand the proceedings at the taking of said hearing and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains all of the proceedings had at said hearing.

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