

ILLINOIS POLLUTION CONTROL BOARD
MAY 8, 2018

IN THE MATTER OF:)
) No. R18-22
) (Rulemaking - Air)
AMENDMENTS TO 35 ILL. ADM.)
CODE PART 205, EMISSIONS)
REDUCTION MARKET PROGRAM)

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer
Timothy Fox, called by the Illinois Pollution
Control Board, taken by Steven Brickey, CSR, for
the State of Illinois, 100 West Randolph Street,
Chicago, Illinois, on the 10th day of May, 2018,
commencing at the hour of 10:00 a.m.

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A P P E A R A N C E S

MR. TIMOTHY FOX, Chairman
MS. CARRIE ZALEWSKI, Board Member
MS. BRENDA CARTER, Board Member
MS. U-JUNG CHOE, Board Member
MS. KATIE PAPADIMITRIU, Board Member
MR. ANAND RAO, Technical Unit

ALSO PRESENT:

MS. LADONNA DRIVER
MR. BUZZ ASSELMEIER
MR. DAVID BLOOMBERG
MS. ANNET GODIKSEN

1 HEARING OFFICER FOX: Good morning
2 to everyone and welcome to this Illinois Pollution
3 Control Board hearing.

4 My name is Tim Fox and I'm the
5 hearing officer for this rulemaking which is
6 entitled Amendments to 35 Ill. Adm. Code 205
7 Emissions Reduction Market System. The Board
8 docket number for this proceeding is R18-22.

9 I want to introduce present from
10 the Board today first going to Springfield we have
11 on the left Board Member Carrie Zalewski and on
12 the right -- on the right raised platform is Board
13 Member Brenda Carter. Here in Chicago at my left,
14 I believe on your right viewing from Springfield,
15 is the Board's newest member U-Jung Choe and to my
16 right is Anand Rao of the Board's technical unit.

17 This hearing is governed by the
18 Board's procedural rules under which all
19 information that is relevant and that is not
20 repetitious or privileged will be admitted into
21 the record. Please bear in mind that any
22 questions that are posed today by the Board or its
23 staff are intended solely to help develop a clear
24 and complete record for the Board's ultimate

1 decisions and don't reflect any decision on the
2 testimony, the proposal or any of the questions
3 that might arise here in hearing today.

4 For the sake of our court
5 reporter, who is here in Chicago, I need to make
6 an extra plea to those of you, particularly in
7 Springfield, to speak as clearly as you can and
8 avoid speaking at the same time as one another.
9 And the Agency's witnesses, if you would at least
10 in your first responses just identify quickly who
11 you are by name so that we can have as clear and
12 simple a process as we might.

13 Just by way of a bit of
14 background on this proceeding, the IEPA filed this
15 rulemaking proposal with the Board on February
16 22nd of 2018 and today we are, of course, holding
17 the first hearing in this rulemaking. The Board
18 published notice of its hearings on March 25th in
19 the State Journal Register in Springfield, on
20 March 26th in the Chicago Sun Times and on April
21 20th, 2018, in the Illinois Register.

22 On March 23rd, a Hearing Officer
23 order directed participants who intended to
24 testify at this hearing to pre-file that testimony

1 by April 26th and on that date the Board received
2 pre-filed testimony from one witness on behalf of
3 the Agency, Mr. Asselmeier, who is, of course,
4 here today. No other participants did pre-file
5 testimony. On May 8th, with the Hearing Officer
6 order, the Board attached 11 questions with the
7 hope of expediting this hearing, but without
8 requiring a written response or setting a deadline
9 for one, we understand that IEPA nonetheless has
10 been working on its responses to those and we want
11 IEPA to know that we appreciate their prompt
12 attention and work on those responses.

13 For this video hearing, any
14 document to be offered as a hearing exhibit must
15 have been received by the Board's clerk at least
16 24 hours before the scheduled start of the
17 hearing. The Board did not receive a hearing
18 exhibit before that deadline, but I do want to
19 stress that the Board's rules specifically provide
20 that any document that is not allowed as a hearing
21 exhibit may be filed at a later date as a public
22 comment.

23 Also, we have a second hearing
24 scheduled, of course, for June 7th of 2018 by

1 video conference also. Off the record before
2 hearing, we briefly discussed the issue of our
3 procedure this morning. The sign-up sheets on
4 which persons may indicate that they wish to offer
5 a comment are blank at both locations. So we can
6 move ahead to the Agency's testimony and any
7 questions based upon it. Once those questions are
8 exhausted, we can see whether anyone has appeared
9 who wish -- wishes to offer a public comment and
10 that ought to take care of what we need to address
11 today.

12 Are there any questions at all
13 about our procedures? Neither seeing nor hearing
14 any, I think we are ready, Ms. Godiksen to have
15 the court reporter swear in the Agency's witnesses
16 and we can get underway.

17 MS. GODIKSEN: Great. Thank you.

18 HEARING OFFICER FOX: Steven,
19 please, if you would when you're ready to swear in
20 the -- I'm sorry. I'm going to interrupt. Your
21 statement of reasons, Ms. Godiksen, indicated that
22 Mr. Bloomberg, who is here, of course, at the
23 hearing, would be available to answer questions.

24 Does it make sense to swear both

1 of them in so that they're ready, in effect, as a
2 panel to respond to questions?

3 MS. GODIKSEN: Absolutely.

4 HEARING OFFICER FOX: Excellent.

5 Let's do that then.

6 WHEREUPON:

7 BUZZ ASSELMEIER and DAVID BLOOMBERG
8 called as witnesses herein, having been first duly
9 sworn, deposeth and saith as follows:

10 HEARING OFFICER FOX: Gentlemen,
11 thank you very much. We can get underway in just
12 a moment.

13 The Board's procedural rules do
14 provide quite explicitly that the pre-filed
15 testimony submitted by Mr. Asselmeier on behalf of
16 the Agency is entered into the record as if read
17 here today. So there is I believe, Ms. Godiksen,
18 no reason for him to repeat that verbatim. If
19 either you or either of the two witnesses would
20 like to begin with a quick summary or statement,
21 we're certainly in order to turn to that if you're
22 ready.

23 MS. GODIKSEN: We're going to waive
24 opening statements and when you're ready I'd just

1 like to introduce my witnesses.

2 HEARING OFFICER FOX: Why don't we
3 go ahead with that then.

4 MS. GODIKSEN: All right. We have
5 on my far left David Bloomberg, Manager of Air
6 Quality Planning Section with the Bureau of Air
7 and Buzz Asselmeier, Manager of the Inventory Unit
8 with the Bureau of Air.

9 HEARING OFFICER FOX: Very good.
10 Anything further by way of introduction?

11 MS. GODIKSEN: Well, before we
12 proceed with questions for the Agency's witnesses,
13 Mr. Asselmeier provided you some of his background
14 in his pre-filed testimony. We would now like
15 Mr. Bloomberg to briefly provide his as well.

16 HEARING OFFICER FOX: Mr. Bloomberg,
17 please go ahead.

18 MR. BLOOMBERG: Okay. I'm the
19 Manager of the Air Quality Planning Section within
20 the Bureau of Air, as Annet indicated, at the
21 Illinois EPA. I have been in this position since
22 November 2012. Starting in 2014, the former air
23 monitoring section was also placed under my
24 supervision. Prior to that position, I was the

1 manager of the compliance unit in the Bureau of
2 Air for almost eight-and-a-half years and before
3 that I worked as an environmental protection
4 engineer in the regulatory unit within the Air
5 Quality Planning Section for approximately 12.5
6 years.

7 In all of my positions, I have
8 coauthored rules and technical support documents
9 and been a primary point of contact both
10 internally and externally for the ERMS rule. In
11 my earlier positions, I wrote the ERMS annual
12 report, provided account officer training and
13 oversaw compliance and enforcement situations
14 involving ERMS. In my current position, I oversee
15 all the air technical staff that is tasked with
16 air regulations, modeling, inventory, State
17 Implementation Plan, or SIP work, air monitoring,
18 monitoring quality assurance and related tasks.
19 These duties include final approval of the ERMS
20 annual report and responding to internal and
21 external questions about the ERMS rule.

22 HEARING OFFICER FOX: Anything
23 further, Mr. Bloomberg?

24 MR. BLOOMBERG: No.

1 HEARING OFFICER FOX: Thanks very
2 much for that introduction. Ms. Godiksen, if the
3 Agency and its witnesses are prepared to begin
4 with questions, the Board did, of course, submit
5 some on Monday the 8th and we can begin with those
6 in numerical order if that makes sense.

7 MS. GODIKSEN: That's great. Would
8 you like to read the questions or should we just
9 go numerically?

10 HEARING OFFICER FOX: I will go in
11 numerical order with a quick summary if that makes
12 sense so the transcript is clear as we can make it
13 quickly at least.

14 MS. GODIKSEN: Okay.

15 HEARING OFFICER FOX: The first of
16 those questions the Board asked the Agency to
17 explain its proposal why the Agency proposed a
18 sunset date rather than a repeal of the ERMS
19 provisions.

20 MR. BLOOMBERG: This is David
21 Bloomberg. At least for air regulations the
22 Agency generally sunsets rules in a situation like
23 this so those rules remain on the books in case
24 there is a later enforcement situation that

1 requires use of the rules because a source was
2 subject at the timeframe in question. By
3 sunseting the rules, effected sources, the
4 public, the Agency and the Board can easily
5 determine the rules that applied at the time.

6 And, you know, you may think,
7 well, how long might someone still, you know,
8 worry about this, but there have been situations
9 where a company was found to have been required to
10 be an ERMS participant several years after they
11 were supposed to have been in.

12 So it is certainly possible
13 that, you know, we could find a source, you know,
14 a year or two from now that should have been in
15 ERMS for the last however many years and for
16 enforcement purposes we keep the rules on the
17 books.

18 HEARING OFFICER FOX: Turning to our
19 second question, Ms. Godiksen.

20 If the Board were to adopt the
21 proposals sunseting these regulations April 30th,
22 2018, does IEPA expect at some point in the future
23 to propose to repeal them all together.

24 MR. BLOOMBERG: It is possible that

1 at some point in the future when it is clear that
2 it's no longer necessary to have these rules on
3 the books for the reasons I just described the
4 Agency may make such a proposal to help cleanup
5 the rules, but no specific plans have been made as
6 of now.

7 HEARING OFFICER FOX: Understood. I
8 have a follow-up, Mr. Bloomberg.

9 Is there at this point a case
10 enforcing the ERMS provisions that is pending.

11 MR. BLOOMBERG: I'm not immediately
12 aware of any. Sometimes cases like this can take
13 a little while before they get settled, but I'm
14 not aware of any that are currently being
15 enforced.

16 HEARING OFFICER FOX: Very good. I
17 appreciate your answer on that, Mr. Bloomberg.

18 Turning to the Board's question
19 number three. We had asked whether US EPA, the
20 United States Environmental Protection Agency, had
21 reviewed the IEPA's Section 110(l) determination
22 and, if so, whether they had made any
23 determination on whether it satisfied Clean Air
24 Act requirements? Has IEPA received a

1 determination of that nature?

2 MR. BLOOMBERG: US EPA has
3 extensively and through several iterations and
4 discussions reviewed the Agency's Section 110(1)
5 demonstration. They unofficially determined that
6 the demonstration satisfies Clean Air Act
7 requirements and, indeed, the Agency waited to
8 submit this proposal until US EPA agreed with the
9 Bureau of Air's 110(1) demonstration.

10 However, US EPA does not make
11 official determinations until Illinois officially
12 provides any rule changes as a SIP submittal. So
13 the Agency does not have anything to submit to the
14 Board in this regard.

15 HEARING OFFICER FOX: Thank you,
16 Mr. Bloomberg.

17 Turning to the Board's question
18 number four. IEPA had referred to a number of
19 state and federal regulations promulgated since
20 the adoption of ERMS which -- under which total
21 allowable VOM emissions are lower than under ERMS.
22 We asked IEPA to clarify whether the newer
23 regulations that you had referred to are generally
24 command and control requirements for the reduction

1 of VOM emissions?

2 MR. BLOOMBERG: Yes, they are and
3 just for a little clarification for anyone who
4 might not be familiar with the term, command and
5 control requirements include those which specify a
6 certain percentage reduction or a limitation on
7 the amount of VOM allowed, for example, in a paint
8 or printing ink or the amount of emissions allowed
9 per hour out of a unit. Anything like that would
10 be considered command and control.

11 HEARING OFFICER FOX: Very good. I
12 appreciate that distinction, Mr. Bloomberg.

13 Turning to question number five.
14 Do -- do the newer regulations that -- that the
15 Agency has referred to including Reasonably
16 Available Control Technology, or RACT, do those
17 VOM rules allow market-based mechanisms such as a
18 trading program like ERMS?

19 MR. BLOOMBERG: No, ERMS was always
20 in addition to RACT rules and when new RACT rules
21 have been put in place sources have had to comply
22 with the new rules as well as the ERMS rule.

23 HEARING OFFICER FOX: Very good.
24 Thank you, Mr. Bloomberg.

1 Turning to the Board's question
2 number seven. The IEPA in its proposal referred
3 quite emphatically to the administrative burden
4 that a sunset of the ERMS program would lift from
5 the regulated sources, and we had asked whether in
6 addition to that administrative benefit there
7 would be any economic benefit, a dollars benefit,
8 for entities that are purchasing trading units
9 and, if so, we had asked the Agency to provide a
10 summary of those annual transactions for recent
11 years.

12 Would either of the Agency's
13 witnesses like to address that for us, please.

14 MR. ASSELMEIER: Yes, that would be
15 for me Buzz Asselmeier. And, yes, there would be
16 an economic benefit for the sources. There would
17 also be economic benefit to all ERMS sources that
18 is directly related to reducing the administrative
19 burden, not keeping records, not filing reports.
20 As for your request for the data, I do have that
21 summary of the annual ATU transactions for the
22 years you requested. Of course it's a little big
23 to sit and read here and we will be submitting
24 this information to the Board as a post-hearing

1 comment.

2 I do have one question on the
3 data of the range of ATU prices and the average is
4 a small set of data I could read here if you would
5 like. If not, that would still be included in the
6 report.

7 HEARING OFFICER FOX: Particularly
8 with the intent of submitting a later written
9 comment, which we appreciate, doing all of that
10 data in a single filing I suspect would be more
11 expeditious for the hearing and easier for the
12 Agency. Any disagreement on the Agency's part on
13 that part?

14 MS. GODIKSEN: No.

15 HEARING OFFICER FOX: Great. I
16 didn't see any disagreement and we appreciate your
17 promptness in pulling that together and we look
18 forward to seeing that data.

19 I had one follow-up,
20 Mr. Asselmeier. You had suggested, and please
21 treat this as an opportunity to correct me if I'm
22 wrong, that even sources that are not engaging in
23 any trading in the ERMS, in that market system,
24 would have at least some administrative burdens,

1 is that a correct understanding of what your
2 response was?

3 MR. ASSELMEIER: Yes, that is
4 correct. Even if you do not trade, the rule
5 requires you have to have a trade account officer,
6 some administration there. You do have to file an
7 annual -- seasonal emissions report every year on
8 that so that would be one requirement that would
9 go away for these type of sources.

10 HEARING OFFICER FOX: Very good. I
11 appreciate your clarification. We can turn to
12 question number eight, the Board's question number
13 eight, which was referred specifically to you,
14 Mr. Asselmeier.

15 You -- your testimony had
16 referred to a general decrease in VOM emissions
17 from the 1978 -- 78 -- from the -- you've referred
18 to a general reduction in VOM emissions, but there
19 was a Figure 3 attached to your testimony that
20 showed an increase in the eight-hour maximum ozone
21 concentration from 2013 to 2017.

22 The Board had asked whether you
23 attributed that to metrological conditions or, if
24 not, whether there was some other source you would

1 attribute that to?

2 MR. BLOOMBERG: This is David
3 Bloomberg. I'm actually going to answer that
4 question. Yes, the fluctuations are greatly
5 attributable to changes in metrological
6 conditions, which is why it is more instructive to
7 look at longer timeframes such as the ten-year
8 blocks that we show in that graph. Throughout the
9 graph, there are several sets of three or four
10 years that taken on their own might appear to show
11 upward trends, but looking at the whole picture
12 shows that those trends are only short-term, not
13 long-term.

14 Additionally, if you look at
15 2013 and 2014, they have two of the lowest values
16 on the whole chart. So simply regressing to the
17 overall average would show what appears to be an
18 increase, but that has to be interpreted in the
19 greater scheme of the long-term view.

20 HEARING OFFICER FOX: Very good,
21 Mr. Bloomberg. I appreciate your clarification.

22 The Board can turn to its
23 question number nine for -- directed to
24 Mr. Asselmeier, but perhaps, Mr. Bloomberg, this

1 is appropriate for you to respond to.

2 The testimony had indicated that
3 ERMS ceased to be a market system and functions
4 much like the New Source Review program -- the New
5 Source Review rules.

6 Could you explain how the
7 function of ERMS and the New Source Review
8 programs would be similar to one another for us?

9 MR. ASSELMEIER: The statement was
10 intended to be an illustrative example. A better
11 statement might be that ERMS functions similarly
12 to a New Source Review program and in ERMS a vast
13 number of sources, even by the ATU's, are
14 currently buying from a single, large source that
15 shut down years ago. That one shutdown source had
16 been capable of providing the necessary ATU's for
17 the prior increases in emissions above the
18 allotment at the other sources.

19 This is where the similarity to
20 New Source Review comes in and in New Source
21 Review, applicable increases and emissions at
22 larger sources need to be offset by reductions in
23 emissions elsewhere in the non-attainment area.
24 And I think as part of your other question that

1 was on there and -- what we say is, no, that New
2 Source rules -- New Source Review rules have not
3 become ineffective and simply that the ERMS rule
4 in the ways I just described tends to accomplish
5 similar outcomes as the already existing NSR
6 rules.

7 HEARING OFFICER FOX: You went right
8 to my next question and I appreciate it.

9 MR. RAO: I have a follow-up.

10 HEARING OFFICER FOX: Mr. Rao does
11 have a follow-up for you.

12 MR. RAO: Mr. Asselmeier, you
13 mentioned that most of the ATU's that are being
14 purchased are from one single source that is
15 shutdown, what is the name of the source?

16 MR. ASSELMEIER: The name of that
17 source is Viskase. They used to be located in
18 Bedford Park.

19 MR. RAO: Okay.

20 MR. BLOOMBERG: That's
21 V-I-S-K-A-S-E.

22 MR. RAO: And with the proposed
23 sunset, will Viskase suffer any economic downturn
24 because they'll not be able to sell their ATU's

1 anymore?

2 MR. ASSELMEIER: That would be
3 correct. They would not be able or allowed to
4 sell ATU's to any sources. If you -- I mean, I
5 will not go into how much I think it will hurt
6 them or not hurt them. I mean, \$20 an ATU for an
7 average price is not making anybody rich, but no
8 matter how many of these they will not be able to
9 sell, they will not have that income.

10 MR. BLOOMBERG: But also I want to
11 point out this is a shutdown facility.

12 MR. ASSELMEIER: Right.

13 MR. BLOOMBERG: They don't have
14 any -- right. Viskase has no facilities in the
15 Chicago area anymore. So this is simply a
16 corporation that is getting paid for allowances
17 from, you know, a facility that no longer exists.

18 MR. RAO: And has this corporation
19 expressed any concern with the sunset?

20 MR. ASSELMEIER: I have not seen
21 any, no.

22 MR. RAO: Thank you.

23 HEARING OFFICER FOX: Mr.

24 Asselmeier, you referred to, and I understand that

1 I think it was an estimate, of \$20 cost for one of
2 the trading units, am I correct?

3 MR. ASSELMEIER: Yes.

4 HEARING OFFICER FOX: Am I correct
5 that is, at least based on some recent years, a
6 rough estimate of what one of those units might
7 yield them if sold through the trading program?

8 MR. ASSELMEIER: Right. That is a
9 rough estimate. Usually I know that number off
10 the top of my head because that's typically what
11 Viskase has been selling the ATU's at. There are
12 some other companies that sell ATU's at a slightly
13 lower or slightly higher price. So as for me
14 putting together the annual performance review
15 report these last many years, I easily remember
16 that \$20 per ATU number off the top of my head.
17 So it might be a little bit more, it might be a
18 little bit less, but in generic terms -- I mean,
19 it's not going to be \$5 more or \$10 more. It's
20 within dollars of \$20.

21 HEARING OFFICER FOX: Very good. I
22 appreciate your clarification on that.

23 MR. RAO: Mr. Asselmeier, do you
24 also top of your head remember how many ATU's are

1 purchased seasonally?

2 MR. ASSELMEIER: I do not remember
3 off the top of my head. The data we'll be getting
4 to you on -- that you requested will have that in
5 there.

6 MR. RAO: Thank you.

7 HEARING OFFICER FOX: Mr.
8 Asselmeier, we may have questions for the second
9 hearing based on that, but, again, we appreciate
10 your help in pulling that together for us to take
11 a look at it.

12 The Board's question number ten
13 referred to a comment from the Joint Committee on
14 Administrative Rules, or JCAR, which asked whether
15 the April 30th, 2018, sunset date, because at some
16 of these rulemaking proceedings, needed to be
17 extended and it appears that the final paragraph,
18 Mr. Asselmeier, of your testimony did address
19 that, am I correct with that understanding?

20 MR. ASSELMEIER: Yes, the Board and
21 you are correct in that interpretation.

22 HEARING OFFICER FOX: Is there
23 anything else that you wish to add in response to
24 their question about that sunset date?

1 MR. ASSELMEIER: I don't have
2 anything.

3 HEARING OFFICER FOX: Very good. I
4 appreciate that.

5 The Board's final question
6 number 11 asked whether the Agency in the course
7 of preparing the rulemaking proposal that was
8 filed on February 22nd had conducted any kind of
9 outreach, written meetings, online, whatever
10 medium might have been used by the Agency, did you
11 conduct a program of stakeholder outreach to
12 elicit some comments on the proposal?

13 MR. BLOOMBERG: This is David
14 Bloomberg. Illinois EPA conducted outreach to
15 regulated entities via industry groups and
16 presentations over the past year or so.
17 Specifically, I have given two presentations that
18 mentioned it at seminars hosted by the Illinois
19 Environmental Regulatory Group, or IERG, in 2017.
20 There have been other discussions as well and I
21 have been told that IERG circulated information to
22 its members, many of whom are subject to the ERMS
23 rule. The information has also been passed along
24 informally to other ERMS participants over the

1 course of the past year and no regulated entities
2 have opposed the proposal to my knowledge.

3 HEARING OFFICER FOX: That was my
4 next question, Mr. Bloomberg. Thank you for
5 jumping right ahead for me. Anything else?

6 MS. CHOE: May I ask a question?

7 HEARING OFFICER FOX: Of course.

8 MS. CHOE: You said you conducted an
9 outreach regarding IERG, I-E-R-G, is that right?

10 MR. BLOOMBERG: Yes.

11 MS. CHOE: That particular industry
12 where if you make an outreach via IERG, would
13 you -- is it safe to say that you will be reaching
14 significant stakeholders within the environmental
15 industry? I guess my question is I'm just
16 wondering if we did conduct the due diligence in
17 terms of outreach by reaching out to one industry
18 group versus maybe two or three?

19 MR. BLOOMBERG: For the -- for
20 industry groups, IERG represents a large number.
21 I don't have the exact number of participants. I
22 am unaware of any other groups in particular that
23 would represent, you know, similarly large numbers
24 that doesn't also overlap with IERG.

1 MS. CHOE: Thank you.

2 MR. RAO: Mr. Bloomberg, in recent
3 industry groups, did your outreach also extend to
4 environmental groups or other groups who may be
5 interested in this rulemaking?

6 MR. BLOOMBERG: We did not
7 specifically do any outreach to environmental
8 groups. I know it has been mentioned at various
9 times. As one example, it was mentioned recently
10 at a hearing in the MPS rulemaking where a number
11 of environmental groups were present. I was
12 discussing Section 110(1) and it was mentioned at
13 that point and we have had no -- no questions or
14 comments from -- from environmental groups at all,
15 to my knowledge.

16 MR. RAO: Thank you.

17 HEARING OFFICER FOX: Mr.
18 Asselmeier, Mr. Bloomberg, the Board appreciates
19 your responses to its questions. Unless there are
20 follow-ups on the part of anyone that is present
21 at any of these two locations, I think we can turn
22 to Ms. Driver and the questions that she has on
23 behalf of IERG. Is there, in fact, any follow-up
24 that anyone wishes to offer? I neither see nor

1 hear any. So, Ms. Driver, if you would like to
2 begin with your questions, we're ready for you to
3 do that.

4 MS. PAPADIMITRIU: Hi, Tim. I'm
5 sorry to interrupt. This is Katie. Can you
6 acknowledge me in the transcript that I'm here?

7 HEARING OFFICER FOX: You shouldn't
8 have had to ask me to do that, but, yes, I want
9 the record to reflect the Board's chairman Katie
10 Papadimitriu is present for hearing today. Thank
11 you for setting me straight.

12 Ms. Driver, please go ahead and
13 if you would spell your last name for our court
14 reporter, that would be helpful, please.

15 MS. DRIVER: Certainly. Ladonna,
16 L-A-D-O-N-N-A, Driver, D-R-I-V-E-R, and I'm
17 outside counsel for the Illinois Environmental
18 Regulatory Group.

19 HEARING OFFICER FOX: Ms. Driver,
20 we're set for you to begin if you are.

21 MS. DRIVER: Thank you. I'm going
22 to use IERG for short so I don't have to say a
23 mouthful every time.

24 IERG just has a few clarifying

1 questions on behalf of its members about how this
2 sunset is going to work. As noted, we have in our
3 membership participating sources in the ERMS
4 program. The first question I would have is --
5 I'll just put it out there and let you all decide
6 who wants to answer.

7 Is it your understanding that
8 participating sources have conditions in their
9 FESOP's or CAAPP permits that refer to ERMS
10 requirements under Part 205?

11 HEARING OFFICER FOX: Ms. Driver,
12 may I interrupt? The FESOP is -- for the benefit
13 of our court reporter is a Federally Enforceable
14 State Operating Permit and CAAPP refers to a Clean
15 Air Act Permit Program permit. My apologies for
16 interrupting. I hope you understood my reason for
17 doing so.

18 MS. DRIVER: I do. I apologize for
19 that. Thank you, Tim.

20 HEARING OFFICER FOX: No need to
21 apologize. Please go ahead.

22 MR. BLOOMBERG: The answer is yes.

23 MS. DRIVER: Okay. Great. How does
24 the Agency see the procedure working for ERMS in

1 this season understanding that the sunset may not
2 be approved until later this year?

3 MR. BLOOMBERG: The way ERMS
4 normally works is the Agency has to take
5 affirmative action to allocate ATU's and that's
6 basically the start of the program for that year.
7 And so since the Agency has proposed April 30th as
8 the sunset as of now the Agency has not taken
9 those affirmative steps.

10 So the Agency's proposal would
11 be that last year was the last ERMS season and
12 that companies would not need to do anything
13 further at this point and really there is nothing
14 companies can do in terms of trading allowances
15 or --

16 MR. ASSELMEIER: I mean, companies
17 could trade ATU's if they wanted to now. Past
18 experience shows that is highly unusual and most
19 of the activity by the companies to trade comes in
20 November and December.

21 MS. DRIVER: Thank you. So just for
22 clarity, the Agency has not populated ATU's for
23 the 2018 ERMS season?

24 MR. ASSELMEIER: That is correct.

1 MS. DRIVER: Assuming that the Board
2 rulemaking finishes before the end of the ERMS
3 season which would be October, is the Agency's
4 position then that ERMS sources do not have to
5 file their seasonal emission reports in November?

6 MR. BLOOMBERG: Yes, presuming that
7 the April 30th sunset date is retained, then that
8 is correct.

9 MS. DRIVER: And then logically
10 following from that, ERMS sources would not have
11 to hold in their ERMS accounts ATU's for the 2018
12 season by December 31st?

13 MR. BLOOMBERG: Correct.

14 MR. ASSELMEIER: Correct.

15 MS. DRIVER: Has there been any
16 discussion about what happens assuming the Board's
17 rulemaking completes and the April 30th date is in
18 the rule as a sunset, nevertheless, the ERMS
19 sources having federally enforceable conditions in
20 their permits requiring them to hold ATU's at the
21 end of the season, provide seasonal emission
22 reports, has there been any discussion with US EPA
23 about the impact of those federally enforceable
24 permit conditions?

1 MR. BLOOMBERG: Not specifically
2 about the conditions, but more along the lines of
3 the fact that they will obviously not approve the
4 SIP for this change in time before the end of the
5 year. Just the timeframe won't workout. The
6 discussions have been with the SIP branch, not
7 with the enforcement people. However, it is
8 beyond my imagination to think that US EPA would
9 enforce against a company for not participating in
10 a program that the state has ceased running.

11 And, in fact, I can only think
12 of maybe one federal enforcement case against an
13 ERMS source that dealt with ERMS and even in that
14 particular case I believe that the Agency did the
15 ERMS portion of it. So that US EPA handled the
16 non-ERMS and the Agency handled the ERMS and that
17 was during all my time in compliance, which as I
18 mentioned earlier was eight-and-a-half years.

19 MS. DRIVER: Okay. Just following
20 up then, Mr. Bloomberg, on the SIP process.

21 What is your anticipation about
22 the timeline from here once the Board rulemaking
23 concludes assuming that the sunset is put in
24 place, what -- what is the Agency's plan about the

1 timing of getting the 110(1) and other things up
2 in front of US EPA for a SIP revision?

3 MR. BLOOMBERG: We don't have a
4 specific timeline, but generally the plan would be
5 to turn it around fairly quickly. I believe that
6 the hearing and notification have met all the
7 requirements. The 110(1) is already included. So
8 it doesn't need to go to any more public notices.
9 So once the decision is final, we can then turn it
10 around and put it all together and submit to US
11 EPA on a fairly quick basis.

12 MS. DRIVER: Has US EPA given you
13 any kind of indication about how long they would
14 take to approve it?

15 MR. BLOOMBERG: No, but I know that
16 they have been undergoing a process by which they
17 are trying to turn around SIP submittals more
18 quickly and their management has been tasked with
19 ensuring that nothing gets backlogged and
20 everything is in a particularly fast manner and I
21 think that something like this which they have
22 seen through the whole process they would probably
23 be able to turn it around quickly, but I obviously
24 can't say that for certain.

1 MS. DRIVER: Right. Right. Do you
2 think it's likely that that could happen by year
3 end, by 12/31/18?

4 MR. BLOOMBERG: No.

5 MS. DRIVER: Do you think
6 nevertheless it is likely from what you're saying
7 that they will approve it --

8 MR. BLOOMBERG: Yes.

9 MS. DRIVER: -- eventually?

10 MR. BLOOMBERG: Yes.

11 MS. DRIVER: Just not by 12/31?

12 MR. BLOOMBERG: Correct.

13 MS. DRIVER: Okay. Tim, if I can
14 just have a moment, please, to confer with my
15 client before we wind up.

16 HEARING OFFICER FOX: Please do so
17 and let us know when you're ready to resume.

18 MS. DRIVER: Thank you. Tim. Thank
19 you for that moment. If I could just ask one more
20 follow-up question to Illinois EPA.

21 HEARING OFFICER FOX: Please go
22 ahead.

23 MS. DRIVER: Thank you. Given that
24 we don't anticipate having federal approval of the

1 SIP, assuming again the Board approves this
2 rulemaking, would the Agency be willing to work
3 with ERMS sources to determine what could be done
4 as part of their Title 5 permits or their FESOP's
5 to deal with the ERMS conditions that are in there
6 for this year?

7 MR. BLOOMBERG: I'm not sure what
8 you mean about working with. I -- I don't think
9 that our permit section would appreciate me saying
10 that the Bureau will go back through all of the
11 permits to change that because they are quite
12 busy, especially with Title 5 and FESOP's. You
13 know, whenever a rule does change or remove, we
14 remember that the rules always take priority and
15 although it is in the permit, if there is no rule
16 to enforce anymore I don't see it, from my chair,
17 as being a problem and I understand that a
18 regulated entity might not like having something
19 in their permit of that nature and perhaps if
20 someone -- if a facility is particularly
21 concerned, they can apply for a modification, but
22 I can't make any blanket promises to change every
23 permit that has ERMS in it.

24 MS. DRIVER: I understand. Thank

1 you, Tim, I think that concludes IERG's questions.

2 HEARING OFFICER FOX: Thank you for
3 your -- for posing those. The Board, again, has
4 come to the end of its questions. Is there anyone
5 present either there in Springfield or here in
6 Chicago who wishes either to offer testimony or to
7 offer a public comment to the Board? I see one
8 person here indicating that they do not wish to do
9 so. Is there anyone there in Springfield that
10 wishes to do either of those things? I am not
11 seeing nor hearing any indication that there is.
12 So I think we can move along.

13 I do want to address the issue
14 of the Economic Impact Study that the Board is
15 required to request. I will bring this up again
16 at the second hearing, but I do want to address it
17 quickly now. Under Section 27(b) of the
18 Environmental Protection Act, the Board must
19 request that the Department of Commerce and
20 Economic Opportunity, or DCEO, perform an Economic
21 Impact Study of proposed rules before the Board
22 adopts them. The Board then must make either the
23 study or DCEO's decision not to conduct one
24 available to the public at least 20 days before a

1 public hearing and in a letter dated March 22nd of
2 2018 the Board's chairman, Katie Papadimitriou, did
3 request that DCEO conduct such an Economic Impact
4 Study and the study specifically requested a
5 response no later than May 7th of 2018. That, of
6 course, is not 20 days before hearing which is why
7 I will bring it up at the second hearing, but I
8 did want to provide anyone present the opportunity
9 to testify or comment on the fact that the Board
10 has not received a response to that request.

11 Is there anyone who wishes to
12 offer that testimony or comment? Neither seeing
13 nor hearing any, I think we have come to the end
14 of the substantive part of our hearing and if we
15 could go off the record very briefly we can talk
16 about the second hearing and any procedural steps
17 before it.

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

21 HEARING OFFICER FOX: After taking a
22 moment to go off the record and discuss procedural
23 matters, we're prepared to come back on the record
24 and wrap things up.

1 The second hearing in this
2 proceeding is scheduled for Thursday, June 7th,
3 2018, at 9:00 a.m. by video conference between the
4 Board's Chicago and Springfield offices with a
5 deadline to pre-file testimony on May 24th of
6 2018. The Agency in response to the Board's
7 question number seven filed for this hearing is --
8 has committed to submitting reports and an
9 explanation I believe you said, Mr. Bloomberg, of
10 those reports by Friday, May 18th of 2018 and in
11 advance, Mr. Asselmeier, we appreciate your help
12 in submitting those which we expect to be helpful
13 in reviewing the record.

14 For the video hearing on June
15 7th, I want to stress that documents that are
16 intended to be offered as a hearing exhibit must
17 be received by the Board's clerk at least 24 hours
18 in advance by 9:00 a.m., of course, on Wednesday,
19 June 6th and certainly the clerk's office can
20 assist you with any of the technical and
21 procedural aspects of that process.

22 I believe copies of the hearing
23 will be available in five business days on
24 Thursday, May 17th and as soon as the Board

1 receives that it will place it on the clerk's
2 office online, or COOL, where, of course, any of
3 the participants and members of the public can
4 view a copy and print it.

5 Are there any other issues or
6 matters that we should address before adjourning
7 and looking ahead to the second hearing? I
8 neither see nor hear any. I want to thank all the
9 participants for their role today. We are
10 adjourned and we look forward to seeing all -- at
11 least many of you again in four weeks. Thank you
12 very much.

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
4

5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this _____ day of
15 _____, A.D., 2018.

17
18
19
20 

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