

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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3

4	IN THE MATTER OF:)
)
5	PROPOSED NEW 35 ILL. ADM. CODE) R01-17
6	217, SUBPART U, NOx CONTROL AND) (Rulemaking-Air)
	TRADING PROGRAM FOR SPECIFIED)
7	NOx GENERATING UNITS, SUBPART)
	X, VOLUNTARY NOx EMISSIONS)
8	REDUCTION PROGRAM, AND)
	AMENDMENTS TO 35 ILL. ADM.)
9	CODE 211)

9

10

11 The following proceedings were held

12 before MR. BOBB BEAUCHAMP, Hearing Officer for

13 the Illinois Pollution Control Board, taken

14 stenographically before GEANNA M. IAQUINTA, CSR,

15 a notary public within and for the County of Cook

16 and State of Illinois, at the James R. Thompson

17 Center, Room 9-040, 100 West Randolph Street,

18 Chicago, Illinois, on the 29th day of November,

19 A.D., 2000, commencing at 9:30 a.m.

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

2

3 ILLINOIS POLLUTION CONTROL BOARD,
4 100 West Randolph Street
5 Suite 9-040
6 Chicago, Illinois 60601
7 BY: MR. BOBB BEAUCHAMP, Hearing Officer

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MEMBERS OF THE ILLINOIS POLLUTION CONTROL BOARD
PRESENT:

10

Mr. Joel Sternstein

11

Mr. Nicholas Melas

12

Ms. Alisa Liu

13

Ms. Marili McFawn

14

Mr. Ronald Flemal

15

Ms. Kathy Glenn

16

MEMBERS OF THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY PRESENT:

17

Mr. Richard Forbes

18

Mr. Dennis Lawler

19

Mr. Robert Sharpe

20

Ms. Laurel Kroack

21

Mr. Christopher Romaine

22

Mr. Yoginder Mahajan

23

Mr. Berkley Moore

24

OTHER AUDIENCE MEMBERS WERE PRESENT AT THIS
HEARING, BUT NOT NOTED ON THIS APPEARANCE PAGE.

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I N D E X

PAGES

GREETING BY
HEARING OFFICER..... 4

PRESENTATION BY MS. KROACK..... 18

QUESTION AND ANSWER SESSION..... 14

CLOSING BY
HEARING OFFICER..... 107

E X H I B I T S

Marked for
Identification

Exhibit Nos. 1, 2, and 3..... 11

Exhibit No. 3A..... 12

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1 HEARING OFFICER BEAUCHAMP: Good morning.
2 My name is Bobb Beauchamp, and I'm the hearing
3 officer in this proceeding. I would like to
4 welcome you to this hearing being held by the
5 Illinois Pollution Control Board in the matter of
6 Proposed New 35 Ill. Adm. Code 217, Subpart U,
7 NOx Control and Trading Program for Specified NOx
8 Generating Units, Subpart X, Voluntary NOx
9 Emissions Reduction Program, and Amendments to 35
10 Ill. Adm. Code 211.

11 Today's hearing is the first day of
12 the first of three scheduled hearings in this
13 rulemaking. Present today on behalf of the
14 Illinois Pollution Control Board and seated to my
15 right is Marili McFawn, the board member
16 coordinating rulemaking. We expect various other
17 board members to be joining us as they come in
18 during the break.

19 Also present today are several
20 members of the Board's staff. To Marili McFawn's
21 right is Alisu Liu of the Board's technical
22 staff. Seated at the end of the table on her

23 right is Joel Sternstein, attorney assistant to
24 Board Member Nick Melas, and seated two seats to

L.A. REPORTING (312) 419-9292

5

1 my left is Kathy Glenn, attorney assistant to
2 Board Member Dr. Ronald Flemal. It's Flemal. I
3 apologize.

4 I have placed copies of the notice
5 and service list sign-up sheets over on the table
6 by the entrance. Please note that if your name
7 is on the notice list, you will only receive
8 copies of the Board's opinions and orders and all
9 hearing officer orders. If your name is on the
10 service list, not only will you receive copies of
11 the Board's opinions and orders and all hearing
12 officer orders, but you will also receive copies
13 of all documents filed by all persons in this
14 proceeding.

15 However, also keep in mind that if
16 your name is on the service list, you are also
17 required to serve all persons on the service list
18 with all documents you file with the Board.
19 Copies of the Board's October 19th, 2000, opinion
20 and order containing the proposed rule and the
21 October 27th, 2000, hearing officer order are

22 also located on that table. You can also find
23 copies of the current notice's service list and
24 the Agency's prefiled testimony as well.

L.A. REPORTING (312) 419-9292

6

1 On October 16th, 2000, the Illinois
2 Environmental Protection Agency filed this
3 proposal for a rulemaking to add 35 Ill. Adm.
4 Code 217, Subpart U, NOx Control and Trading
5 Program for Specified NOx Generating Units and
6 Subpart X, Voluntary NOx Emissions Reduction
7 Program and various amendments to 35 Ill.
8 Administrative Code 211.

9 On October 19th of 2000, the Board
10 adopted for first notice the Agency's proposal.
11 This proposal was published in the Illinois
12 Register on November 13th of 2000 at pages 16,452
13 and 16,467. This proposal was filed pursuant to
14 Section 28.5 of the Environmental Protection Act
15 entitled Clean Air Act Rules, Fast Track.

16 Pursuant to Subsection (g) of that
17 section, the Board is required to proceed within
18 set time frames toward the adoption of the
19 regulation. As stated in the Board's October
20 19th, 2000, opinion, the Board has no discretion

21 to adjust these time frames under any
22 circumstances. Pursuant to Section 28.5 of the
23 Act, the Board scheduled three hearings. As
24 announced in the October 27th, 2000, hearing

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7

1 officer order, today's hearing is confined to
2 testimony by the Agency witnesses concerning the
3 scope, applicability, and basis of the rule.

4 Pursuant to Section 28.5, this
5 hearing will begin today and continue on the
6 record from day to day, if necessary, until
7 completed. The second hearing is currently
8 scheduled for Wednesday, December 20th, 2000, at
9 9:30 a.m. in room 2-025 of the James R. Thompson
10 Center in Chicago. It will be devoted to
11 economic impact considerations and presentation
12 of testimony, documents, and comments by affected
13 entities and all other interested parties.
14 Prefiling deadlines for the second hearing may be
15 found in the October 27th, 2000, hearing officer
16 order.

17 The third hearing is currently
18 scheduled for Wednesday, January 3rd, 2001, at
19 9:30 a.m. in room 9-040 of the James R. Thompson

20 center. It will be devoted solely to any Agency
21 response to the materials submitted at the second
22 hearing.

23 The third hearing will be cancelled
24 if the Agency indicates to the Board that it does

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8

1 not intend to introduce any additional material.
2 If the third hearing is cancelled, all persons
3 listed on the notice list will be so advised
4 through a hearing officer order.

5 As stated in the October 19th, 2000,
6 opinion, the Board is holding today's hearing
7 consecutively with the hearings in docket number
8 R01-16 in the matter of Proposed Amendments to 35
9 Ill. Adm. Code 217, Subpart B, Electrical Power
10 Generation. The first hearing in R01-16
11 concluded yesterday evening and the second
12 hearing is scheduled to begin on December 19th,
13 2000.

14 Today's hearing will be governed by
15 the Board's procedural rules for regulatory
16 proceedings. All information which is relevant
17 and not repetitious or privileged will be
18 admitted. All witnesses will be sworn and

19 subject to cross-questioning. Once again, the
20 purpose of today's hearing is to allow the Agency
21 to present testimony in support of its proposal
22 and to allow questioning of the Agency.

23 The Agency will present any testimony
24 it may have regarding this proposal. At the

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9

1 conclusion of the Agency's testimony, we will
2 allow for questioning of the Agency regarding its
3 testimony.

4 I prefer that during the question
5 period, all persons with questions please raise
6 their hand and wait for me to acknowledge you.
7 Once I have, please state your name and the
8 organization you represent, if any.

9 Are there any questions regarding the
10 procedure we will follow this afternoon -- I'm
11 sorry, this morning? At this time then, I'd like
12 to ask Board Member McFawn if she has anything
13 else she would like to add to my comments?

14 MS. McFAWN: No. I just want to welcome
15 those of you that returned from yesterday and
16 those of you who are joining us today for the
17 R01-17 rulemaking. We hope to proceed

18 expeditiously, but to be most thorough, and with
19 the Agency's help, I'm sure we're going to
20 accomplish that task so that we fully come to
21 understand their proposal. Thank you.

22 HEARING OFFICER BEAUCHAMP: Thank you.

23 Mr. Sharpe, do you have any opening
24 statements?

L.A. REPORTING (312) 419-9292

10

1 MR. SHARPE: Just a brief one. Let me
2 introduce myself. My name is Robert Sharpe. I'm
3 deputy counsel with the Agency and will be
4 serving as the Agency attorney in this
5 proceeding.

6 Since you've already summarized the
7 proceeding, I don't want to go into any more of
8 that. I would like to take time on behalf of the
9 Agency to thank the hearing officer and the board
10 members for setting an expeditious hearing
11 schedule and coordinating with the other hearings
12 to help us minimize our travel and inconvenience.
13 It's been helpful to us.

14 I'd just like to introduce the other
15 Agency people that are here. To my left is
16 Laurel Kroack, who's deputy chief of the bureau

17 of air. To my right is Dennis Lawler, who's
18 manager of the division of air pollution
19 control. To his right is Dick Forbes, who is
20 manager of the ozone regulatory unit and air
21 quality planning section.

22 Out on the left here is Chris
23 Romaine, who's manager of the utilities unit and
24 permit section, and behind me are Berkley Moore,

L.A. REPORTING (312) 419-9292

11

1 in the middle, Yoginder Mahajan, and Bob Hutton.
2 Bob Hutton is with the source monitoring unit and
3 Berkley and Yoginder are with the air quality
4 planning section of the Agency.

5 With that said, we have three sets of
6 prefiled testimony that we have -- that we have
7 submitted to the Board already and is available
8 back over on the table. I'd like to move at this
9 time that that be -- all three of those be
10 accepted as exhibits. I've already given them to
11 the hearing officer.

12 HEARING OFFICER BEAUCHAMP: I have them
13 here. We will then mark the testimony of
14 Mr. Forbes as Exhibit 1, the testimony of Dennis
15 Lawler as Exhibit 2, and the testimony of Laurel

16 Kroack as Exhibit 3.

17 (Exhibit Nos. 1, 2, and 3
18 marked for identification,
19 11-29-00.)

20 MR. SHARPE: In addition to that, we do
21 have an overhead presentation that Ms. Kroack is
22 going to present, and I believe I've given you a
23 copy of that as well. I think you probably want
24 that in as an exhibit as well. So we move that

L.A. REPORTING (312) 419-9292

12

1 you accept that as one as well.

2 HEARING OFFICER BEAUCHAMP: It will be
3 accepted. We'll mark that as Exhibit 3A then.

4 (Exhibit No. 3A marked
5 for identification,
6 11-29-00.)

7 HEARING OFFICER BEAUCHAMP: The copy of
8 the slides are admitted as Exhibit 3A.

9 MR. SHARPE: Our intention at this point
10 then was just to proceed with the presentation of
11 Ms. Kroack, which will summarize the proceeding
12 and hit on an explanation of the rulemaking.

13 HEARING OFFICER BEAUCHAMP: Very good.
14 Before we do that, we will need to swear in all

15 the witnesses. I know that you've got a fairly
16 large panel. So if we could have the court
17 reporter swear all of them in at once.

18 (Witnesses sworn.)

19 HEARING OFFICER BEAUCHAMP: Mr. Sharpe,
20 the Agency may proceed with its testimony.

21 MS. KROACK: Good morning. I apologize
22 for the state of my voice, but I'll do my best to
23 speak as loudly and as clearly as I can.

24 The presentation today is just going

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13

1 to cover the differences of Subparts U and X that
2 weren't present in Subpart W, which has already
3 been before this Board and most of you are
4 familiar with. If you have any particular
5 questions on that, we'll be happy to answer them,
6 but we don't intend to go into detail on the
7 elements between U and W that are similar.

8 Subpart U provides for the
9 non-electrical generating units or non-EGUs to
10 participate in the same federal NOx Trading
11 Program as Subpart W sources, but they have a
12 separate budget, and that budget is allocated
13 differently. Subpart X is a voluntary program.

14 It provides for voluntary reductions of NOx or
15 units not subject to the trading program and was
16 required by Section 9.9(d)(3) of the Illinois
17 Environmental Protection Act.

18 These are the Subpart U provisions
19 that were common to Subpart W. It has the same
20 provisions -- yes, Mr. Rieser.

21 MR. RIESER: Ms. Kroack, I had a
22 suggestion yesterday. I'd like to do it again.
23 Just so the transcript is clear, can you indicate
24 at least that you're changing slides or when

L.A. REPORTING (312) 419-9292

14

1 you're onto the next slide what the heading of
2 the next slide is? It's easier for people to
3 follow along for those who read the transcript to
4 see where you are.

5 HEARING OFFICER BEAUCHAMP: Thank you,
6 Mr. Rieser. I was just about to make that
7 suggestion.

8 MS. KROACK: This is the next slide, and
9 it's called Subpart U provisions common to
10 Subpart W. It provides as Subparts U and W both
11 provide for small units to opt-in to the trading
12 program. It has provisions for allowing low

13 emitters, those who emit less than 25 tons per
14 season, to opt-out of the program. It has
15 permitting requirements, monitoring, and
16 recordkeeping requirements, reporting
17 requirements, reconciliation requirements,
18 trading and banking requirements, and
19 incorporations by reference.

20 In our rule, we intended to
21 incorporate by reference those provisions which
22 did not necessarily need to be within the text of
23 the rule to make the requirements clear, and we
24 have a whole list of those if anyone has any

L.A. REPORTING (312) 419-9292

15

1 questions on them.

2 The next slide. This slide, the next
3 slide, is entitled Subpart U applicability. The
4 units subject to Subpart U are fossil fuel-fired
5 stationary boilers, combustion turbines, and
6 combined cycle systems that have the maximum
7 design heat input of greater than 250 million btu
8 per hour, and this is a complicated applicability
9 provision.

10 The next slide, please. Subpart U
11 applicability, continued. That's listed on

12 Appendix E, and Appendix E represents those
13 existing units subject to this rule that we've
14 identified or if a unit isn't listed on
15 Appendix E, it at no time serves a generator
16 producing electricity for sale or has the
17 potential to use less than or equal to 50 percent
18 of the unit's potential electrical output
19 capacity or is part of any source as defined in
20 Section 211.6135 listed on Appendix E.

21 HEARING OFFICER BEAUCHAMP: Ms. Kroack, if
22 I could just interrupt for a moment.

23 MS. KROACK: Sure.

24 HEARING OFFICER BEAUCHAMP: The copies

L.A. REPORTING (312) 419-9292

16

1 that we have on your second bullet point under is
2 not listed on Appendix E, we have a greater than
3 or equal to mark rather than a less than mark.

4 MS. KROACK: Oh. This should be less than
5 or equal to. I don't know what happened.

6 Subpart W had a similar provision. It should
7 have been greater than, but not greater than or
8 equal to. So I'm not sure where the confusion is
9 there.

10 Going through these for a minute,

11 there are some units that are listed on
12 Appendix E that do produce electricity for sale,
13 but in the development of our rule, we decided or
14 determined that those units really weren't what
15 we would call electrical generating units. Their
16 primary purpose tended to be to produce processed
17 steam for the plant internal operations, and
18 those units we listed on Appendix E, but they
19 also -- some of them also sell electricity to the
20 grid, any excess capacity. The PEOC definition
21 was added to pick up units whose primary purpose
22 appeared to be to generate electricity, but the
23 small units were less than 250 million btu, but
24 used enough capacity of that combustion turbine

L.A. REPORTING (312) 419-9292

17

1 stationary boiler combined cycle system such that
2 they were pulled into the rule, and we modified
3 the definition of source or added the definition
4 of source because we were concerned -- actually,
5 the concern was expressed by the traditional
6 electrical generating units that new units who
7 were subject to Subpart U would also be covered
8 under Subpart W and would come into their trading
9 budget. They were very concerned. The concern

10 of the EGUs was very that their budget was
11 separate because the allocation methodology is so
12 different, which is the next slide, I believe.
13 Not quite.

14 This slide is entitled
15 implementation. This rule, like Subpart W,
16 begins May 31st, 2004, and it goes through the
17 end of that control period, September 30th, 2004,
18 and thereafter is May 1st through September 30th
19 of each year. The reason for the change from May
20 1st to May 31st, again, was the decision of the
21 District -- United States Court of Appeals for
22 the D.C. Circuit.

23 Shannon, the next slide. Low
24 emitters is the title of the slide. These units

L.A. REPORTING (312) 419-9292

18

1 may opt-out of Subpart U requirements. To
2 qualify, they're restricted to burning natural
3 gas and/or fuel oil. They have to restrict their
4 mass NOx emissions in the control period via
5 FESOP or Federally Enforceable State Operating
6 Permit to 25 tons or less during the control
7 period, and they're required to demonstrate
8 compliance with that mass NOx emission limits

9 through Part 75 monitoring.

10 Part 75 monitoring is shorthand for
11 describing Continuous Emissions Monitoring
12 Systems set forth in 40 CFR Part 75 or through
13 default emission rates, which allows them not to
14 use a CEMS, but to actually take a default
15 emission rate table and apply the maximum default
16 emission rate to their operating hours to
17 determine their mass NOx emissions.

18 The next slide is called
19 low-emitters, continued. What's the effect on
20 the non-EGU budget? That should actually say
21 non-EGU budget, effect on the budget. If the
22 Agency is ever allocated allowances to the unit
23 who is in the program and that unit opts-out, the
24 budget would be reduced by the mass NOx emission

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19

1 limit included in that unit's FESOP.

2 If allowances were never allocated to
3 the unit, USEPA has indicated the budget wouldn't
4 be reduced and the unit is treated as a small
5 EGU, and those allowances would be available for
6 allocation under the Subpart U trading budget.

7 Next slide. This slide is the

8 allowance allocation methodology. This is the
9 crux of most of the differences between Subpart U
10 and Subpart W. The non-electrical generating
11 units who are primarily in business to create a
12 product and not to generate electricity were
13 concerned that they didn't want to be in an
14 updating allocation system. They needed to be
15 able to rely on having allowances because they
16 weren't going to be in the business of trading in
17 the market revising the boilers to use low NOx
18 burners or whatever the control technology.

19 They really wanted to know what their
20 allowances were going to be so they could plan
21 for the future, and after negotiation with the
22 non-EGUs and the traditional EGUs, the
23 traditional EGUs basically indicated consent to
24 that arrangement as long as the non-electrical

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20

1 generating units never came into their pool of
2 allowances for allocation. Essentially, didn't
3 play both sides of that fence.

4 So what we've provided are the fixed,
5 permanent allocations to those units that we
6 identified as non-electrical generating units

7 listed in Appendix E. I know, Ms. McFawn, that
8 you had a question yesterday about why we didn't
9 define electrical generating unit in the rule,
10 and while it would be helpful, it became
11 difficult, if not an impossible process, to
12 define what the primary purpose was.

13 Some units might have boilers that
14 were using a small portion of the processed steam
15 and were actually selling a lot of electricity on
16 the grid, but actually needed that unit for
17 whatever reason for their plant's purposes, and
18 they were really -- the non-EGUs were really
19 concerned that they knew what their allocations
20 were and here's how they treated it.

21 So we tried a number of definitions
22 and none of them seemed to quite cover all of the
23 variations for the listed Appendix E units. So
24 we chose not to define the difference between EGU

L.A. REPORTING (312) 419-9292

21

1 and non-EGU, and, in fact, that's consistent with
2 what USEPA indicated in the Federal Register,
3 that it was very difficult to separately define
4 EGU from non-EGU, and that's why they treated
5 them similarly under the NOx SIP call.

6 The other thing about the allowance
7 allocation methodology is the amount of
8 allowances that each unit will be allocated per
9 season is listed in column five of Appendix E.
10 Column four of Appendix E is the maximum number
11 of allowances they'll ever be entitled to receive
12 from the budget during a control season. It is
13 higher than column five because column five
14 includes a deduction for the New Source Set-Aside
15 for new units. If that New Source Set-Aside is
16 not used in a particular control season, those
17 allowances then would be allocated to the
18 Appendix E units.

19 Again, that's indicated in the third
20 bullet point where it says, the total number of
21 allowances that could be allocated may be
22 adjusted upward by unused allowances from the New
23 Source Set-Aside, and the reason we use the term
24 may rather than shall is there may be a situation

L.A. REPORTING (312) 419-9292

22

1 where we have a new unit and we have a handful of
2 allowances left, ten allowances, and it would be
3 impossible to allocate those allowances and list
4 the Appendix E units on a whole allowance

5 pro-rata basis, and in that situation, we
6 determined it was fairest to retain the
7 allowances in the budget for use in the next
8 control period or until the budget grew large
9 enough to make a pro-rata allocation back to the
10 non-EGUs listed in Appendix E, and it makes it
11 very clear that Subpart U units may not
12 participate in the Subpart W trading budget.

13 Next slide, Shannon. Allowance
14 allocation methodology, continued is the title of
15 this particular slide. This is how new units
16 must obtain allowances. They can average amongst
17 the source or transfer units -- allowances
18 amongst units at the source. They can negotiate
19 for a permanent transfer from another Subpart U
20 unit, which we will recognize. They can make a
21 purchase within the Federal NOx Trading Program.

22 To the extent that credible
23 reductions are created under Subpart X, they can
24 use those to demonstrate compliance, and for new

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23

1 units, those constructed after January 1st, 2000,
2 for three years they're entitled to purchase
3 allowances from the New Source Set-Aside.

4 This slide is entitled New Source
5 Set-Aside, NSSA. Again, units that are
6 constructed after January 1st, 2000, are
7 eligible. There's an annual three percent New
8 Source Set-Aside which is 146 allowances.
9 Allowance must be purchased at the market rate
10 from the Agency, and we must receive that request
11 to purchase allowances by November 1st.

12 The next slide. New Source
13 Set-Aside, continued is the title of this
14 particular slide. We will inform eligible units
15 of the number of allowances they may purchase by
16 April 1st. If a New Source Set-Aside is
17 oversubscribed in that there are more requests
18 for allowances than there are allowances
19 available, we will allocate allowances on a
20 pro-rata whole allowance basis. Any allowances,
21 again, remaining in the New Source Set-Aside may
22 be returned to the quote, Appendix E units,
23 again, only if they can be returned on a whole
24 allowance pro-rata basis.

L.A. REPORTING (312) 419-9292

24

1 That really concludes our
2 presentation on Subpart U, and those are the

3 material ways in which it differs from Subpart
4 W. Subpart X is different, substantially
5 different. Again, it was required by Section
6 9.9(d)(3) of the Act. This slide is entitled
7 Subpart X.

8 Again, it was required by Section
9 9.9(d)(3). It required the Agency to propose and
10 the Board to adopt a voluntary NOx reduction
11 system that would create additional allowances.
12 The intent of this subpart is to transfer NOx
13 reductions from the non-trading portion of the
14 state budget to the trading portion. In the NOx
15 SIP Call, USEPA set a statewide NOx budget for
16 each state that was subject to the SIP Call.
17 That included mobile on-road and off-road
18 sources, area sources, the categories we just
19 listed, and a number of other, what they call,
20 small sources that weren't covered by the
21 applicability requirements.

22 The state of Illinois and the Agency
23 as its representative in this matter has to make
24 a showing under the NOx SIP Call to USEPA

L.A. REPORTING (312) 419-9292

25

1 triennially that we are meeting that state

2 budget. We have proposed Subpart X and we are
3 going to be submitting it to USEPA as a SIP
4 revision with the intent that if we can
5 demonstrate that we have obtained NOx reductions
6 from the non-trading portion, we should be
7 allowed to remove those reductions or those
8 allowances, in effect, into the trading portion
9 of the budget to help sources meet their
10 requirements under these rules.

11 9.9(d)(3) provided that any
12 reductions must be verifiable, quantifiable, and
13 federally enforceable. So this rule attempts to
14 address all of those requirements.

15 Next slide, Shannon. Eligible NOx
16 emission reduction units is the title of this
17 slide. The unit from which reductions are
18 obtained must emit NOx, they must be fossil-fuel
19 fired, and they must discharge through the
20 stack. They cannot be subject to Subparts T,
21 which is the rule for cement kilns; U, the
22 proposal before you today for non-EGUs; V, which
23 is the rate-based rule for electrical generating
24 units; or W, which is the NOx SIP Call rule for

1 electrical generating units of Part 217. They
2 cannot be what is called a retired unit under 40
3 CFR 96.5. They cannot be an opt-in unit under
4 Subparts U or W.

5 So it's whatever other type of small
6 unit that emits through a stack that may be out
7 there that isn't taking advantage or isn't
8 subject to one of these requirements.

9 Next slide, Shannon. This slide is
10 NOx emission reduction proposal. The way Subpart
11 X has been drafted is it requires whoever wants
12 to participate in a Subpart X reduction to submit
13 a proposal to the Agency for review and
14 approval. We have elements that must be
15 contained in that proposal.

16 First of all, the proposal must
17 obviously identify the reduction unit, unit from
18 which NOx reductions will be obtained. It has to
19 identify how that reduction will be obtained,
20 whether it's through shutdown of that unit,
21 application of a control technology that reduces
22 emissions out of the stack, or whether the
23 unit -- unit or operators of the unit accepts a
24 permit reducing NOx by taking a limit on the

1 hours of operation or emission rate.

2 This title is NOx emission reduction
3 proposal, continued. The reduction proposal
4 requires that the owner/operator request a cap on
5 NOx emissions from similar emission units similar
6 to the reduction unit, and the theory in this was
7 we wanted to have a measure that prohibited
8 reduction shifting so that if an owner/operator
9 came in that had two boilers, they simply just
10 didn't shut down one and ratchet up the
11 production of a boiler right next to it, which
12 really wouldn't reduce NOx emissions in the air
13 shed.

14 During negotiations, a number of
15 industry who intended to or hoped to take
16 advantage of this proposal raised some concerns
17 about that. They said we -- initially, the
18 proposal said all NOx emitting units, and they
19 really made the point that it should be limited
20 to similar emission units when what we were
21 concerned about was production shifting, and we
22 agreed with that.

23 So this provision excludes units that
24 are already subject to Subparts U or W on the

1 theory that they're already covered by another
2 proposal. So whatever their production limits
3 are, they're within one portion of the federal
4 cap, and an example that I gave, if the unit is a
5 boiler, include all other boilers, turbines, or
6 combined cycle systems, turbine or combined cycle
7 system.

8 The next element of the NOx emission
9 reduction proposal is they have to identify
10 baseline emissions for both the reduction unit
11 and each of the capped units, and then they have
12 to demonstrate how they're going to show
13 compliance via emissions monitoring or testing.

14 Next slide. They have to obtain a
15 FESOP to address the elements of the proposal.
16 This, again, is a new slide, NOx emission
17 reduction proposal, continued. It would be the
18 third one with this same title. The
19 owner/operator also has to annually certify that
20 reductions were obtained. The way the proposal
21 is drafted, reduction would be obtained in one
22 control period, but would not be eligible to be
23 used following the control period, and they would
24 be eligible once that owner/operator actually

1 certified that those reductions were, in fact,
2 obtained. Again, this provides an element of
3 certainty to this process and hopefully will make
4 this Subpart X approvable, that is, in USEPA's
5 review.

6 Next slide, limit on NOx reductions.
7 There are -- we went through the proposal. We
8 made a determination that units had to meet
9 certain criteria to qualify other than the ones
10 we previously stated. One is that they had to
11 have been operated before January 1st, 1995, and
12 the reason for that is when USEPA set the
13 statewide budget for the NOx SIP Call, they used
14 1995 as the base year. They identified all
15 emission units that were out there in 1995.

16 They allowed for some growth, and
17 they also took into account that some units would
18 actually be shut down and would reduce emission
19 and would go out of service. So, again, that's
20 an element of hopefully making this proposal
21 acceptable to USEPA. We felt that if we could
22 tie it to an emission unit they actually
23 identified in that inventory, we would have a
24 greater likelihood that this proposal would be

1 accepted and, in fact, it's consistent with its
2 purposes of a budget shift.

3 The unit, going forward, if it
4 decided that it no longer wanted to keep that
5 limit on operating hours or its NOx emission
6 rate, if for some reason it found the control
7 technology was not meeting the reduction
8 requirements or was interfering with its
9 operations for whatever reason, they can elect to
10 withdraw the proposal in their permit, but
11 there's a procedure for that. Since those
12 allowances have been moved into the trading
13 portion of the budget, there need to be some
14 mechanisms for reviewing the withdrawal of the
15 proposal as well.

16 Another element of limiting the use
17 of those NOx reductions is that 80 percent of the
18 NOx reductions are deemed credible under this
19 proposal and 20 percent are retired for air
20 quality. The reason for this is simply that
21 Subparts U and W already provide for small units
22 to opt-in, but they provide that they opt-in and
23 they use Part 75 monitoring which USEPA believes
24 is a very good surrogate for comparing NOx

1 emissions from one unit to another, and we are
2 not requiring this in the proposal.

3 Part 75 monitoring is expensive,
4 especially if you're intending to shut down a
5 unit. It makes no sense to apply it for a year
6 and have the unit operate when you have a number
7 for that unit in the 1995 inventory, but we
8 retired 20 percent of those reductions for air
9 quality or we propose to do that because we
10 believe that that adds a measure of certainty to
11 this proposal for USEPA as well. Even though
12 Part 75 monitoring is not being used, they can
13 have some assurance that the NOx reductions that
14 we believe were being obtained are, in fact,
15 being obtained from these units.

16 The next slide is limit on NOx
17 reductions, continued. Again, this is just the
18 purpose of the 20 percent NOx reduction unit.
19 The units aren't required to conduct Part 75
20 monitoring. An additional element is that
21 shut-down units are not limited under Subpart X.
22 Opt-in units under Subparts W really envision the
23 NOx SIP Call. These units would continue
24 operating because they would get an allocation

1 based on heat input or USEPA said you could do an
2 output based allocation methodology if you
3 developed one, although they didn't develop one
4 in their proposal, and in this situation, they
5 really envisioned that shut-down units would just
6 no longer be eligible to receive allowances. It
7 would be out of the system, and, in fact, they
8 accounted for that and said they were statewide
9 budgets.

10 So this Subpart X is significantly
11 different in that regard in that shut-down
12 reductions can be used into the future as long as
13 that source maintains compliance with its cap on
14 similar emission units.

15 Next slide, Shannon. As I spoke
16 before -- this is titled baseline emissions
17 determination. The owner/operator has to submit
18 a baseline emissions determination for each of
19 the units subject to the cap in the reduction
20 unit. We determined that based on the use of a
21 1995 inventory in setting the budget that that's
22 where we should begin. We should look at
23 emissions during 1995, and we determined that we

24 would -- the best source of information for that

L.A. REPORTING (312) 419-9292

33

1 would be as reported by the owner/operator in the
2 annual emission report, and we would take the
3 seasonal component of that or 5/12ths.

4 The next slide. This is baseline
5 emissions determination, continued, next slide.
6 There would be some sources, though -- we lost
7 it. There would be some sources, though, that
8 might not have an annual emission report in 1995
9 for one reason or another for whom that report
10 wouldn't have been representative and those would
11 be the capped emission units that aren't the
12 reduction unit. So we allowed for a procedure of
13 looking at what may have been included for that
14 source in the 1995 budget or what may have
15 been -- may be able to be determined by
16 subsequent annual emission reports.

17 If there were no emissions in 1995,
18 there was capped units that aren't the reduction
19 unit, and there was no inventory amount, we would
20 look at the average emission rate times the
21 average number of hours of operation for two of
22 the three previous control periods prior to the

23 proposal submittal, and that would be the most
24 recent data that we would have we would be able

L.A. REPORTING (312) 419-9292

34

1 to justify that to USEPA and we would be able to
2 then hopefully move that unit into the trading
3 portion of the budget.

4 I have a couple of more housekeeping
5 matters. We have been in discussions with
6 industry groups on a couple of provisions in
7 Subpart X, and they requested some changes after
8 the proposal was filed. We have agreed to make
9 two of the three. The third one we are still
10 negotiating. We do not have that language in
11 final form today to submit, but I wanted to
12 briefly state what the two elements are for the
13 record.

14 In Section 217.805(g), we have a
15 provision that says a NOx reduction unit can't be
16 one that generated offsets under the New Source
17 Review Program or 35 Ill. Adm. Code Part 203.
18 The theory was we didn't want reductions to be
19 double-counted, both for the purposes of the SIP
20 Call and for the purposes of new source review.
21 However, we took a closer look at the NOx SIP

22 Call, and USEPA indicates, but does not formally
23 state, that they believe reductions could
24 probably be used for both purposes and that they

L.A. REPORTING (312) 419-9292

35

1 intended to issue guidance a third day.

2 They, of course, have not done that,
3 but based on that statement in the SIP Call, we
4 felt it was appropriate to go ahead and allow
5 those reductions to be double-counted to the
6 extent that that was applicable.

7 However, the A(20) provision would
8 still apply. So we're proposing to delete
9 Section 217.805(g). Also, industry raised a
10 point that they felt there might be units who are
11 subject to Subpart W who might want to be subject
12 to Subpart U instead, and the Agency has no
13 objection to that as long as the budget for
14 Subpart W is not decreased. We obviously provide
15 for permanent allocations under Subpart U. If we
16 allowed every source that was subject to W to
17 move, they would obviously do that and they'd
18 take their allocations with them if they felt
19 they could.

20 Obviously, that's not consistent with

21 Subpart W and its allocation methodology. So
22 we've said to the extent a unit may want to move,
23 it may do so as long as it realizes it's not
24 taking any allocation from Subpart W or Subpart

L.A. REPORTING (312) 419-9292

36

1 U. Small chance that that provision might be
2 used, but industry was concerned that it might
3 actually occur. So we have agreed to add the
4 language, and that would appear in Section
5 217.654, and we'll have that later.

6 We have another concern that industry
7 has raised that we have not quite worked out and
8 we hope to do that in the next week or so and
9 submit that to the Board. It's the revised
10 language in the motion to amend. We also will
11 have a rather lengthy errata sheet which are
12 basically because we finished these rules in a
13 very big hurry based on time constraints and it
14 wasn't quite as neat as it needed to be. So we
15 have a number of minor, minor revisions that
16 don't change the substance of the rule, but are
17 necessary to make consistent formatting and
18 consistent language throughout. That will be
19 following later in the week as well.

20 We have one last item. We submitted
21 an economic and budgetary analysis for Subparts U
22 and X to the Board, and I'd like to provide some
23 supplemental information on that matter. We
24 typically state in those that there are no

L.A. REPORTING (312) 419-9292

37

1 additional costs to the Agency because we find
2 costs for administering each of these regulatory
3 obligations difficult to assess in that they
4 cover so many areas. They cover the development
5 of the proposal. They cover computer support.
6 They cover permitting. They cover compliance.
7 They cover enforcement.

8 Typically, we say that it provides
9 there are no additional costs to the Agency, but
10 in that regard, this program is different in that
11 it's administratively complex and it will require
12 significant resources. We will have to set up a
13 system for tracking how we make allowance
14 allocations and reporting those to USEPA.
15 Subpart X will require a whole provision of
16 monitoring budget shifts and whether those are,
17 in fact, occurring that require permitting --
18 permits to be issued covering all of these

19 requirements for both U and X. It will require
20 greater accuracy and more detailed reporting by
21 the Agency to USEPA, and also the fact that this
22 Section 9.9, unlike other statutory authority for
23 the Agency, actually allows us to recoup those
24 costs, and most of the rest of the Environmental

L.A. REPORTING (312) 419-9292

38

1 Protection Act does not allow us to recoup costs
2 for any particular regulatory program.

3 So we have gone through and done a
4 preliminary estimate of the cost of what we call
5 a full-time equivalent personnel time and an
6 estimation of administrative costs, and we
7 believe that these costs will be approximately
8 \$700,000 for the program, and we will be
9 including that and some supporting information in
10 a document later in the proceeding.

11 HEARING OFFICER BEAUCHAMP: Thank you,
12 Ms. Kroack.

13 Is there anything further from the
14 Agency?

15 MR. SHARPE: Can we have a moment?

16 HEARING OFFICER BEAUCHAMP: Why don't we
17 go off the record?

18 (Discussion had
19 off the record.)

20 (Brief pause.)

21 HEARING OFFICER BEAUCHAMP: Before we
22 continue, I'd like to note that at the beginning
23 of Ms. Kroack's testimony, we were joined by
24 Board Member Melas, and we have just been joined

L.A. REPORTING (312) 419-9292

39

1 by Board Member Flemal.

2 Does the Agency have anything
3 further?

4 MS. KROACK: We do have two things. I
5 misspoke when I was describing potential
6 electrical output capacity. I tied it to the
7 size of the boiler. It's actually tied to the
8 size of the generator. It applies if the
9 generator is less than 25 megawatts, and we note
10 that there's some ambiguity in the rule on
11 whether Subpart X can be used for reductions for
12 internal combustion engines and with respect to
13 opt-in units that we may be clarifying in the
14 future.

15 As you may be aware, the NOx SIP Call
16 had provisions addressing reductions for internal

17 combustion engines, but the Court remanded that
18 portion of the rule to USEPA for some
19 clarification. We actually expected that rule to
20 have been issued by now. We believe it's going
21 to be forthcoming shortly. However, internal
22 combustion engines will be one of those
23 categories that we don't believe could
24 participate in Subpart X because they will

L.A. REPORTING (312) 419-9292

40

1 eventually be subject to the SIP Call if they're
2 not currently listed in those exclusions for
3 reduction units at this point in time. So we'll
4 be addressing something on that in our motion to
5 amend next week.

6 HEARING OFFICER BEAUCHAMP: Thank you.
7 Ms. Kroack, there were several slides in the
8 packet that you submitted to the Board as an
9 exhibit that you did not touch on in your
10 testimony.

11 Are those going to be addressed
12 later?

13 MS. KROACK: Well, we submitted them as a
14 package because we felt if there were questions
15 on those particular aspects in U that are the

16 same as W, we have slides that I will be speaking
17 from to answer questions that aren't just clear
18 through a verbal transcript. So we included them
19 in the package, but we didn't present them, and
20 they're similar to the slides that we presented
21 in our hearings on Subpart W.

22 HEARING OFFICER BEAUCHAMP: Thank you.

23 Mr. Sharpe, would the Agency like to
24 offer anything further in support of its

L.A. REPORTING (312) 419-9292

41

1 proposal?

2 MR. SHARPE: No. Our presentation is
3 complete. We're available to answer questions on
4 Ms. Kroack's presentation or any of the prefiled
5 testimony.

6 HEARING OFFICER BEAUCHAMP: Thank you. We
7 will then now proceed with questions for the
8 Agency witnesses. As I previously mentioned, if
9 you do have a question for the Agency witnesses,
10 please raise your hand and wait for me to
11 acknowledge you, and when I do, please state your
12 name and the organization you represent, if any.
13 This is kind of a large room. So it also might
14 be helpful if you were to come to the front and

15 take one of the front seats so that it will be
16 easier for the board members, the Agency
17 witnesses, and the court reporter to hear you.

18 Are there any questions for the
19 Agency witnesses?

20 MS. HIRNER: Thank you. My name is
21 Deirdre Hirner, and I'm the executive director of
22 the Illinois Environmental Regulatory Group,
23 IERG, and, of course, as you know, IERG
24 represents 68 companies in the state of Illinois

L.A. REPORTING (312) 419-9292

42

1 in mostly negotiations, and we represent their
2 interests before the Agency and before the Board,
3 and I have a very few questions today that I
4 would like to ask of the Agency that will, for
5 us, clarify a little bit of the background and
6 the intent of the Agency on some of the
7 provisions that have been included.

8 I, fortunately, have very, very few
9 questions because we have had a very good
10 cooperative working relationship with the Agency
11 throughout this regulatory proceeding, and most
12 of my questions, again, very few, I would like to
13 direct probably at Ms. Kroack.

14 HEARING OFFICER BEAUCHAMP: Please.

15 MS. HIRNER: My first question is in
16 regard to proposed Part 217.805, emission unit
17 eligibility, and in your testimony at page 17,
18 you indicated that the Agency's concern was that
19 post-1995 units are not included in the 1995
20 baseline and, thus, are not eligible for shifting
21 into the trading budget.

22 Is that a correct understanding of
23 that?

24 MS. KROACK: Yes.

L.A. REPORTING (312) 419-9292

43

1 MS. HIRNER: Then my next question would
2 be, would you agree, though, that post-1995 unit
3 emissions reductions can be made verifiable,
4 quantifiable, and federally enforceable or, to
5 the contrary, if not, could you explain why they
6 couldn't be verifiable, quantifiable, and
7 federally enforceable?

8 MS. KROACK: I guess that my response to
9 that is it depends on how you define verifiable
10 and quantifiable. What we're proposing or what
11 Section 9.9(d)(3) required was a shift from the
12 trading budget or non-trading budget. Since

13 these units weren't included in the budget at
14 all, we believe that verifying and quantifying
15 reductions from those for the purposes of a shift
16 from one budget to the other is not possible and
17 probably not prudent for this proposal.

18 MS. HIRNER: But could you elaborate a
19 little bit on that by explaining why the Agency
20 is treating Subpart X eligibility different than
21 Subpart U or Subpart W opt-in unit eligibility?

22 MS. KROACK: The reason for that is that
23 Subpart U and W by requiring Part 75 monitoring
24 and the same set of provisions as U and W and

L.A. REPORTING (312) 419-9292

44

1 USEPA and the NOx SIP Call, if you examine those,
2 it will indicate that they have confidence that
3 the emissions are -- that they can verify
4 emissions and emissions from that unit -- one ton
5 of NOx from that unit is the same as one ton of
6 NOx from another unit.

7 So, in essence, they're comparing
8 apples to apples rather than apples to oranges.
9 Because the monitoring provisions for Subpart X
10 are not as stringent and the whole host of the
11 Federal NOx Trading Program requirements that are

12 in the SIP Call are not applicable to Subpart X
13 units, we believe that we can't quantify mass NOx
14 emissions in the same regard, and, therefore,
15 this is sort of a safety element or a measure of
16 approvability for this proposal.

17 MS. HIRNER: I would now like to turn your
18 attention to proposed 217.810, participation
19 requirements, and in your prefiled testimony, at
20 page 18, you indicated that it was the Agency's
21 contention that an emission cap on like units
22 subject to exclusions, and there are a number of
23 exclusions laid out, is needed to assure the
24 integrity of the program.

L.A. REPORTING (312) 419-9292

45

1 Now, proposed Part 217.835(a)(5)
2 allows for unit exclusions from the emission
3 cap. Could you please explain the problem or the
4 concerns regarding production shifting that the
5 Agency is attempting to address by imposing this
6 emissions cap?

7 MS. KROACK: The simplest example that I
8 can think of, and there are tons and there are
9 iterations upon iterations, would be simply a
10 company that has two process boilers to create

11 steam, running both of those at less than full
12 capacity, say one at 50 percent and one at 60
13 percent, and for whatever reason they elect to
14 shut down one unit and increase the capacity of
15 the other unit, thereby, that the environment
16 doesn't see a net reduction in NOx emissions from
17 that source, only from one unit that has been
18 shifted to another unit and, therefore, the
19 integrity of the budget has not been preserved.

20 MS. HIRNER: Further on in your testimony,
21 page 18, you had indicated that a primary
22 difference between opt-in units versus Subpart X
23 units is Part 75 monitoring requirements for the
24 opt-in units.

L.A. REPORTING (312) 419-9292

46

1 MS. KROACK: That's one of the major --
2 probably the critical difference.

3 MS. HIRNER: Is monitoring something
4 that's any type of a real issue if either a unit
5 shuts down or does not operate at all during the
6 control season?

7 MS. KROACK: The monitoring provisions --
8 essentially, the NOx SIP Call allowed for units
9 to opt-in, but it didn't envision a structure

10 that those units would opt-in and then shut down
11 because they envisioned an allocation methodology
12 based either on heat input or output based
13 allocations. So the unit would, in fact, have to
14 be operated to receive an allowance, and they
15 also have the retired unit exception that they're
16 not allowed to participate in the trading program
17 under 40 CFR. I think 96.5 is the correct
18 reference.

19 Subpart X is different in that we are
20 moving units in who want to shut down and
21 allowing them to continue to receive an
22 allocation into the future, which was not
23 envisioned by the NOx SIP Call, and USEPA makes
24 it very clear in the SIP Call and in their model

L.A. REPORTING (312) 419-9292

47

1 rule that Part 75 monitoring is critical to the
2 trading program.

3 MS. HIRNER: Let's say a Subpart X unit
4 that shuts down and transfers its emissions to a
5 Subpart U or a Subpart W unit, would the
6 verifiable and quantifiable reduction be the
7 Subpart X units baseline minus zero and, if so,
8 how does monitoring enter into those

9 calculations?

10 MS. KROACK: The credible reduction would
11 be that baseline determination, 80 percent of
12 that baseline determination, 20 percent of which
13 would be retired for air quality. Again, it's
14 because we haven't had Part 75 monitoring applied
15 to that unit for any period of time to verify
16 that unit's mass NOx emissions during the control
17 season.

18 MS. HIRNER: Now, I'd like to turn your
19 attention to proposed 217.835 which would allow a
20 source to demonstrate that like units should not
21 be subject to the cap by ensuring that production
22 shifting would not occur.

23 Can you elaborate on how that
24 demonstration would be made?

L.A. REPORTING (312) 419-9292

48

1 MS. KROACK: Frankly, no. I mean, maybe
2 Mr. Romaine can, but let me just make this
3 statement. We included this language because we
4 realized that in drafting a rule, we could not
5 envision every scenario that might occur in the
6 future, and we didn't want to have a blanket
7 prohibition that didn't allow us to examine

8 unique factors. So I can't come up with an
9 example, but Mr. Romaine feels he has an answer.

10 MR. ROMAINE: I think that the concept
11 would still apply, but we'd be talking about a
12 more refined examination of what is, in fact, a
13 like unit.

14 We might examine a facility that has
15 a number of boilers, as Ms. Kroack has given in
16 her example. We might simply start from our
17 perspective and say they are all like boilers.
18 However, the source would come in and point out
19 to us, in fact, that there are two boiler
20 systems, maybe a high-pressure boiler system that
21 is limited in its function and certain types of
22 activities as well as a low-pressure heating
23 boiler system, and they could point out to us
24 that because the reduction only involves the

L.A. REPORTING (312) 419-9292

49

1 high-pressure system, it's sufficient to
2 establish this cap on the high-pressure system so
3 that a more refined examination of what are the
4 likelihoods should be limited to focusing on the
5 high-pressure boilers.

6 Again, as Ms. Kroack has said, this

7 does provide room for further evaluation on a
8 case-by-case basis of the circumstances of a
9 particular project to see how broad a cap needs
10 to be to assure that we are getting real
11 reductions that were recognized through separate
12 ends.

13 MS. HIRNER: And just to, again, help me
14 think through this about the cap on the like
15 emissions, I'm going to give a very simple
16 example. If we assume that a source adds a whole
17 new process, a whole new process plant to build
18 widgets, and that whole new process plant is a
19 carbon copy of the existing plant, but it's at
20 some point in the future and its growth -- it's
21 related to growth and demand at that plant, that
22 new process plant requires a new boiler, the same
23 type of boiler as the old plant had, would this
24 new boiler be exempt from the cap because it was

L.A. REPORTING (312) 419-9292

50

1 new production or would it be bound by that cap?

2 MS. KROACK: Unless the source made some
3 unique demonstration, it would be bound by the
4 cap, and the reason is is while there may be a
5 separate plant, production shifting from that

6 process to the other process could still occur,
7 and if you made 100 widgets over here and you
8 designed this one that you could make up to 200,
9 you moved half of your production from here to
10 half of it here, and it would be still be facing
11 the same situation.

12 So growth in and of itself will not
13 remove a unit from the cap. There would have to
14 be a more refined demonstration that could occur,
15 but I don't know under what circumstances it
16 would necessarily occur.

17 MS. HIRNER: Now, I have some questions
18 about some different points. In your testimony
19 on page 19 in regards to proposed 217.825 that
20 requires 80 percent of the verifiable,
21 quantifiable, and federally enforceable emissions
22 reductions will be allocated in a shut-down unit
23 while 20 percent will be retired in cases of both
24 reductions and shutdowns, can you please explain

L.A. REPORTING (312) 419-9292

51

1 your rationale behind the 80/20?

2 MS. KROACK: The 80/20, again, is because
3 we are making a shift from the non-trading
4 portion of the state budget to the trading

5 portion, and under the Federal Trading Program,
6 because the trades are made on a regional basis
7 and not just within the state of Illinois, it is
8 not a program that the Illinois EPA administers.
9 In fact, USEPA administers all critical elements
10 of that program.

11 We felt to add an element of
12 approvability to basically encourage USEPA to
13 approve this program and the lack of Part 75
14 monitoring we had to have some reduction in what
15 emissions would be usable and credible under the
16 trading program because we weren't necessarily
17 measuring mass NOx emissions pursuant to Part 75.

18 So, therefore, this was an element
19 that we felt was appropriate and necessary to
20 help us in pushing this program with USEPA and
21 hopefully as a SIP revision.

22 MS. HIRNER: Even though as we reviewed
23 the proposal and we have the opt-in provisions
24 for U and W which don't have an 80/20

L.A. REPORTING (312) 419-9292

52

1 requirement, what is the reason behind treating
2 these two types differently, the opt-ins in X and
3 the opt-ins in U and W when USEPA hasn't required

4 that 80/20?

5 MR. ROMAINE: As Laurel has explained,
6 it's important to remember that acid rain
7 monitoring under Part 75, by the way, can be
8 required before the reduction and after the
9 reduction. For Subpart X, we're not requiring
10 Part 75 monitoring in either point. Under
11 Subpart U, Part 75 monitoring is required before
12 the fact to verify the amount of available
13 emissions.

14 So under Subpart X, there's no
15 subpart -- Part 75 monitoring to verify or
16 quantify the amount of reduction that's being
17 converted into allowances.

18 MS. HIRNER: If we're looking at this, and
19 as I understand, you said that X and W
20 anticipated there would be no shutdowns?

21 MS. KROACK: U and W, correct.

22 MS. HIRNER: U and W, but that X is a
23 shutdown. So if -- it could be that there will
24 be a number of shutdowns.

L.A. REPORTING (312) 419-9292

53

1 So thinking about that, does the
2 Agency believe that if you were to allocate 100

3 percent of the verifiable, quantifiable, and
4 federally enforceable reductions from the Subpart
5 X units rather than 80 percent, do you see that
6 as having the potential to be in conflict with
7 the federal program?

8 MS. KROACK: Subpart X, as it stands, is
9 not -- is in conflict with the trading program.
10 It's not provided for by the trading program.
11 It's something different. It's something
12 unique. It's something that we are going to have
13 to sell to USEPA and obtain their acceptance of
14 to be able to use it effectively.

15 So we were trying to build in
16 elements to sort of make up for the lack of Part
17 75 monitoring, which we understood that sources
18 who were shutting down units did not want to have
19 to do because of the cost of installing it for a
20 year and then taking it off, and they felt that
21 that was an unreasonable expenditure.

22 They also didn't want to use it for
23 units that were making reductions into the future
24 through control technology or limits on rates.

L.A. REPORTING (312) 419-9292

1 We accepted that comment, but we felt that since

2 we weren't going to require Part 75 monitoring,
3 we had to do something to sort of equalize those
4 NOx emissions so that the actual reductions that
5 we were presenting to USEPA they would treat as a
6 ton of the NOx allowance, which is one ton of NOx
7 under the trading program. We felt the 80/20 is
8 necessary for that element of the program.

9 Whether USEPA will accept it or not
10 remains to be seen, but we added it, we felt, as
11 an element to help us in getting this proposal
12 approved by them.

13 MS. HIRNER: This is my last question.

14 In your testimony on page 14
15 regarding proposed rule 217.668, the New Source
16 Set-Aside for Subpart U, you had said that this
17 was intended to assure that approval of
18 allowances would be available for potential new
19 sources.

20 Is it the Agency's belief then that
21 these allowances may be difficult to come by and
22 that's why the pool is needed or if the
23 allowances will not be difficult to come by, then
24 what is the pool needed for?

1 MS. KROACK: We do not believe that once
2 the program is up and running -- the federal
3 program is up and running allowances will be
4 difficult to obtain. However, we felt that as a
5 matter of economic growth in this state, we had
6 to reserve a small pool, it's 146 allowances, in
7 the event that for one reason or another
8 allowances were difficult to obtain in any given
9 year under any given situation, and this was just
10 a decision because we have a New Source Set-Aside
11 provided for the Subpart W budget where we know
12 we have growth. Subpart U, we're not sure that
13 we'll have growth, but we felt it was a
14 safeguard.

15 We do provide if these allowances are
16 not utilized that we will, in fact, reallocate
17 them back to the units listed on Appendix E and
18 the portions from which they were taken.

19 MS. HIRNER: Those are my questions, and
20 I'd like to thank you for giving me the
21 opportunity to be here today and for having these
22 proceedings.

23 MS. McFAWN: You're welcome, and your
24 questions were very interesting and helpful to

1 the Board.

2 HEARING OFFICER BEAUCHAMP: Thank you,
3 Ms. Hirner.

4 Do we have any other questions for
5 the Agency witnesses?

6 MR. GRIFFITHS: Joe Griffiths and I'm
7 representing the University of Illinois,
8 Champaign-Urbana campus primarily, and, again,
9 thank you for the opportunity to come today and
10 ask you a couple of questions.

11 Laurel, primarily, I just wanted to
12 clear up on the question on the emission cap in
13 Subpart X.

14 Can it be assumed that that would be
15 based on allowable emissions?

16 MS. KROACK: No. It's based on baseline
17 emissions, and that's as you report it in your
18 annual emission report.

19 MR. GRIFFITHS: So all the units back in
20 1995 would have to be -- based on the cap would
21 be based on those emissions?

22 MS. KROACK: It's based on what you report
23 as your actual emissions, correct, not
24 allowables.

1 MR. GRIFFITHS: The other point is, and
2 this is more just for the record, the University
3 of Illinois had not been party to a lot of the
4 initial actions regarding the rule, and --

5 HEARING OFFICER BEAUCHAMP: I'm sorry.
6 Will you hold on while we swear you in if you're
7 going to be presenting testimony?

8 Would you allow the court reporter to
9 swear you in first?

10 MS. McFAWN: It sounded as if you were
11 about to testify, which is excellent, but you're
12 going to tell the conditions at the U of I; is
13 that correct?

14 MR. GRIFFITHS: I just wanted to make a
15 point.

16 MS. McFAWN: Let's have you sworn in just
17 in case we need to.

18 (Witness sworn.)

19 MR. GRIFFITHS: Just a point for the
20 record is that in the beginning a lot of the
21 development of the rule on this on the national
22 level and the development of Appendix E, a list
23 of sources that were affected, was done in the
24 case of University of Illinois without their

1 Mr. Griffiths is right, I believe. I wasn't
2 involved in the early negotiations either. This
3 process has been going on for several years and
4 it predated my involvement, but as far as the
5 limit on the size of the boiler, that's actually
6 set by the NOx SIP Call. We were not given any
7 discretion in that regard.

8 However, there are low-emitter
9 provisions that if you can establish that you
10 have less than 25 tons per season by other
11 monitoring or the application of the default
12 rate, then you can get out of the program. So
13 that's available to you if it meets your needs

14 HEARING OFFICER BEAUCHAMP: Do you have
15 anything further, Mr. Griffiths?

16 MR. GRIFFITHS: The university is aware of
17 that option. However, had they been involved
18 earlier, they probably would have put in for
19 derating of 245 and been allowed their existing
20 emission rate of approximately 200 to 300 per
21 season.

22 HEARING OFFICER BEAUCHAMP: Thank you.
23 You'll also have an additional opportunity to
24 testify at the second hearing, if you choose, in

1 greater depth.

2 Are there any other questions?

3 Mr. Rieser.

4 MR. RIESER: Yes. I just have a very
5 few. The first one has to do with the first
6 definition in Section 211.4067, NOx trading
7 program, which looks suspiciously like a
8 suggestion I think I made in the last Subpart W
9 rulemaking, although I do have a question about
10 the language, and this may be part of the speed
11 with which this was put together.

12 It says that the -- for purposes of
13 35 Illinois 0217, Subparts U and W, the NOx
14 trading program, shall meet, m-e-e-t, the
15 requirements of 35 Illinois Administrative Code
16 217, et cetera, and I'm wondering if that should
17 be mean, m-e-a-n?

18 MS. KROACK: It should be meet.

19 MR. RIESER: How is that?

20 MS. KROACK: Well, wait a minute. Wait a
21 minute. No. Mean is the term used. It may not
22 be the most artful term, but basically we're
23 saying when we define NOx trading program, we're

24 defining it as what's appearing in 35 Illinois

L.A. REPORTING (312) 419-9292

61

1 Administrative Code 217 Subparts U and W and the
2 provisions of the federal trading program that we
3 incorporated by reference in Subparts U and W.

4 MR. RIESER: So would the word be mean,
5 and when you use the term, it means those
6 things --

7 MS. KROACK: My -- okay. The difference
8 is the Board's first notice, what we have. Ours
9 says mean. So that's why I was confused. It
10 should say mean. The first notice says meet, and
11 our proposal says mean. So I'm sure that's just
12 one of those things that --

13 MS. McFAWN: Wait a minute. I just want
14 to make sure I understand the question, and I
15 notice that it did parallel what was prompted in
16 Subpart W, and I wondered which came first.

17 Are you saying that the correct
18 language is mean as in m-e-a-n?

19 MS. KROACK: Correct.

20 MS. McFAWN: Okay. Good. Thank you.

21 MR. RIESER: And just a couple of brief
22 follow-ups on Ms. Hirner's questions.

23 Has the Agency had any direct
24 discussions with USEPA with regard to Subpart X?

L.A. REPORTING (312) 419-9292

62

1 MS. KROACK: Yes, we have.

2 MR. RIESER: And what has -- has the USEPA
3 expressed a position with regard to Subpart X?

4 MS. KROACK: We've had discussions with
5 Region 5 staff where we presented it to them
6 briefly and described how it was going to work
7 and encouraged them to look at it in a positive
8 light and attempted to present it as positively
9 as possible.

10 We got what I would say was positive
11 reaction to it from Region 5 staff. We intend to
12 set up another meeting with Region 5 staff to,
13 again, go through it and answer any questions
14 they may have, but, obviously, we're not -- we
15 can't control whether USEPA accepts this in the
16 SIP revision or not.

17 MR. RIESER: Was the proposal that was
18 presented the one that's here before the Board?

19 MS. KROACK: The one that's here before
20 the Board.

21 MR. RIESER: Okay. So they had never

22 reviewed a proposal that, for example, didn't
23 have the 80/20 split that Ms. Hirner asked
24 about?

L.A. REPORTING (312) 419-9292

63

1 MS. KROACK: No.

2 MR. RIESER: Okay. And that 80/20 split,
3 I think to characterize the testimony, was
4 intended to capture the uncertainty, if you will,
5 of the fact that the units that you were looking
6 at had not had the rigorous type of monitoring
7 that other units would require, other units that
8 are in the trading program?

9 MS. KROACK: Major reason for it, yes.

10 MR. RIESER: There isn't, of course, any
11 objective connection between those two elements?
12 I mean, there's nothing that says that the amount
13 of -- the uncertainty factor for the calculation
14 of NOx emissions for those units is 20 percent
15 less than the uncertainty as a result of Part 95
16 monitoring?

17 MS. KROACK: That's correct.

18 MR. RIESER: So that's just a figure that
19 the Agency came up with sort of out of the air to
20 be 50/50? It could be 90/10.

21 MS. KROACK: I would more appropriately
22 call it a surrogate for what we felt the
23 uncertainty was. Obviously, we can't quantify
24 it. It would be different from emission unit to

L.A. REPORTING (312) 419-9292

64

1 emission unit, but it captures a level of
2 uncertainty that we felt was appropriate and
3 would make the program more attractive.

4 MR. RIESER: If you had information with
5 regard to the -- if you had detailed information
6 with regard to the operation of those units
7 during that 1995 time frame, you could use that
8 information to develop a pretty accurate picture
9 of the NOx emissions even though it doesn't have
10 NOx monitoring pursuant to Part 95?

11 MR. MOORE: I don't think even if one had
12 detailed operational characteristics of an
13 emission unit, such as a boiler, because the
14 unique configuration of an individual boiler has
15 a tremendous -- tremendously varying impact on
16 the amount of NOx emissions that a boiler will
17 generate.

18 So what I'm really saying is that the
19 base year estimates are probably uncertain for

20 individual units, but they're pretty accurate, we
21 believe, for the overall constellation of
22 sources -- of units included in the baseline
23 year.

24 MR. RIESER: What are some examples of

L.A. REPORTING (312) 419-9292

65

1 units that would be subject to Subpart X?

2 MS. KROACK: Basically, they would be
3 small boilers, combustion turbines, combined
4 cycle systems, cement kilns that aren't already
5 subject to U, W, or T.

6 MR. RIESER: Does the Agency have any
7 estimate as to how many units we're talking
8 about, the universe of units that would be
9 subject to Subpart X?

10 MS. KROACK: Well, they're really not
11 subject to it, but who could take advantage of
12 Subpart X. I don't believe we've done any sort
13 of listing because it's a voluntary program. I
14 don't believe we did that sort of technical
15 analysis.

16 MR. RIESER: Wouldn't these have been
17 sources that-- again, since we're talking about a
18 1995 base year, you would have had some

19 calculation in order to evaluate their
20 contributions to the emissions overall for that
21 baseline year?

22 MS. KROACK: The presumption is that the
23 unit would have been included in the 1995
24 statewide inventory and there would be some

L.A. REPORTING (312) 419-9292

66

1 presumption of its emissions.

2 MR. RIESER: And is that presumption
3 quantifiable?

4 MS. KROACK: Dick.

5 MR. FORBES: Yeah. Yes, it is. It's
6 contained in the overall statewide budget. The
7 estimates of those emissions are included in
8 USEPA's, you know, statewide budget for the
9 state, but, again, those particular units were
10 not the focus of the NOx SIP Call, and as you
11 stated, these sources are ones that would not
12 have been subject to the more rigorous
13 monitoring.

14 Since that time frame has passed,
15 it's not possible to go back in time and
16 remonitor those for those operational scenarios
17 that existed back in that time frame. So it's

18 kind of an impossible situation to be able to do
19 an analysis to verify what the emissions would
20 have been under Part 75 monitoring versus
21 whatever existing estimates have been used to
22 quantify those emissions.

23 MR. RIESER: But for that baseline year,
24 the IEPA developed a number that represented the

L.A. REPORTING (312) 419-9292

67

1 emissions from all these -- this universe of
2 units that we're talking about; is that correct?

3 MR. FORBES: Correct.

4 MR. RIESER: Do you remember how that was
5 done?

6 MR. MAHAJAN: For the most part, the
7 emissions were calculated based on that unit for
8 the factors. That's just an average factor that
9 varies from unit to unit.

10 MR. RIESER: But to do that, you would
11 have had to have had identification of each of
12 the units that were included in those factors
13 that added all of those up to come up with the
14 number -- come up with the number that you used
15 for the baseline emissions?

16 MR. FORBES: Yes.

17 MR. MAHAJAN: Like he said, those
18 emissions are in the budget calculations. It's
19 under the non-EGU portion of the budget. We have
20 those numbers. So I don't know exactly how much,
21 but we can find out.

22 MR. MOORE: I think what we're saying is
23 that we have much more confidence in the accuracy
24 of the total emissions from all of the small

L.A. REPORTING (312) 419-9292

68

1 boilers, for example, than we do for the
2 emission, the precise magnitude of emissions from
3 an individual boiler.

4 MR. RIESER: Thanks very much.

5 HEARING OFFICER BEAUCHAMP: Thank you,
6 Mr. Rieser.

7 Are there any other questions for the
8 Agency witnesses? Sir.

9 MR. HANSON: I have one question. My name
10 is Scott Hanson. I work for Cinergy, and I
11 appreciate the Board and the Agency hearing my
12 questions today.

13 My question relates to Section -- I
14 believe it relates to Section 217.6629,
15 methodology for obtaining NOx allocations. In

16 Part B, it states that the owner/operator of
17 budget units subject to this subpart may
18 permanently transfer all or part of the
19 allocations and allowances to another budget unit
20 in Subpart U or to a budget unit subject to
21 Subpart W, and my question is how a budget unit
22 that is listed in Subpart -- in Appendix E would
23 be affected if sometime in the future that
24 facility chose to become an EGU subject to

L.A. REPORTING (312) 419-9292

69

1 Subpart W instead of non-EGUs subject to Subpart
2 U?

3 MS. KROACK: I want to first, before you
4 answer that question, point out that there is a
5 typo in 217.662(b). It says column four. It
6 should say column five. Four is the total amount
7 and five is the amount less the New Source
8 Set-Aside. Units can't transfer their portion of
9 the New Source Set-Aside.

10 Getting back to your question, the
11 theory was if you had a unit that was listed in
12 Appendix E, any new unit at your source would be
13 subject to Subpart U and would not receive an
14 allocation. You would have to find an

15 allocation.

16 The reason for that is simple. We
17 have been updating allocation methodology in W
18 where we have -- for some years existing units
19 get a portion of their allowances fixed and then
20 the rest they get it at a pro-rata basis, and
21 eventually it's all updating versus Subpart U
22 which is a permanent allowance.

23 The concern for the electrical
24 generating units was that somebody -- a company

L.A. REPORTING (312) 419-9292

70

1 who has process boilers who gets a permanent
2 allocation under Subpart U and then shuts them
3 down builds a cogeneration facility that meets
4 Subpart W because they serve a generator greater
5 than 25 megawatts would then go into the Subpart
6 W pool and take allowances from there as well,
7 double-dipping. This is designed to prevent
8 that.

9 So if you have a new unit and you
10 were listed in Appendix E, you will have to find
11 an allocation either on the market or a permanent
12 transfer from a U unit or hopefully pursuant to
13 Subpart X, and that's how the rule is structured

14 at this point in time.

15 MR. HANSON: But if you are an existing
16 unit -- if one of the existing units in
17 Appendix E chooses to sell electricity to the
18 grid and would be classified then as an EGU,
19 would they still be entitled to the allowances
20 that are listed?

21 MS. KROACK: Yes. They're still subject
22 to Subpart U. They still get their allowances.
23 They get them into the future.

24 MR. HANSON: Okay. Very good. Thank you

L.A. REPORTING (312) 419-9292

71

1 very much.

2 HEARING OFFICER BEAUCHAMP: Thank you,
3 Mr. Hanson.

4 Other questions for the Agency
5 witnesses? Let's turn to the Board then to look
6 for questions.

7 MS. McFAWN: Well, I have some questions.
8 I was looking at the definition of source that's
9 proposed at Part 211. Forgive me if I didn't
10 find the explanation in your prepared testimony,
11 but my first question is rather elementary, and
12 that is that this title is the same as the

13 definition already existing in Part 211. We now
14 have two sections called source.

15 Is that a typo or is that
16 intentional?

17 MS. KROACK: It was intentional. We
18 really could have included at the end of the
19 definition of source the previous definition or
20 we could have added a definition. We chose to
21 add it. We didn't know what else to call it.

22 We could have said Part 217 source,
23 but even that wouldn't have been descriptive
24 because it isn't all Part 217. It's just these

L.A. REPORTING (312) 419-9292

72

1 particular subparts. So we added the definition
2 and we limited it in the first clause to Subparts
3 T, U, V, W, and X.

4 MS. McFAWN: Well, I'm certainly not an
5 authority on the administrative rules, but I
6 cannot imagine the joint committee accepting
7 this. So if you guys could put your heads
8 together --

9 MS. KROACK: And come up with a --

10 MS. McFAWN: -- and come up with a
11 different title, it would be helpful to us, and I

12 wouldn't want to have to compose this, I'll
13 admit.

14 MS. KROACK: Okay. We will come up with
15 something. It may be unique because of its
16 placement at 6135. They're done alphabetically.

17 MS. McFAWN: Oh, that's true. I see your
18 point.

19 MS. KROACK: We'll work on something. It
20 may be more of an artifice than it is
21 descriptive.

22 MS. McFAWN: We will try and think of
23 something as well.

24 The definitions are very different.

L.A. REPORTING (312) 419-9292

73

1 So I do think it's important that we
2 distinguish.

3 This is, I believe, a definition
4 based on the federal definition of source; is
5 that correct?

6 MS. KROACK: This is based on the federal
7 definition of source that we've included in
8 Section 39.5 of the Illinois Environmental
9 Protection Act. It's inclusive of support
10 operations, support facilities of that concept.

11 MS. McFAWN: Well, in the definition,
12 there is no criteria about what constitutes a
13 support facility.

14 Is there such criteria anywhere else
15 in the Act or the Board's regulations?

16 MS. KROACK: There isn't in the Board
17 regulations. The Act -- we refer to this
18 definition at 39.5. There is USEPA guidance on
19 what constitutes a support facility and common
20 control, and this -- as I said, this is the
21 definition that we added to 39.5 to include those
22 concepts, and it is necessary because of the
23 decision that came out and challenged the
24 definition of source and color communications.

L.A. REPORTING (312) 419-9292

74

1 MS. McFAWN: So that amendment postdates
2 color communications?

3 MS. KROACK: Yes.

4 MS. McFAWN: Also, I was wondering as it
5 reads, it says that source may mean a stationary
6 source that belongs to a single major industrial
7 grouping.

8 Is a stationary source a series of
9 units? I mean, when I look at that, common sense

10 tells me that, of course, a source belongs to the
11 same SIC code. Am I missing something here?

12 MR. ROMAINE: Yes.

13 MS. McFAWN: Do you mean only if there's
14 multiple sources?

15 MR. ROMAINE: No. A source commonly is
16 understood as a plant for purposes of Title 5,
17 for purposes of new source review, and for
18 purposes of this program. So it refers to the
19 collection of individual emitting units on a
20 particular property, continued adjacent
21 properties, a campus.

22 As the term has developed over the
23 years, the Clean Air Act, I guess USEPA has made
24 it clear that you can have sources within

L.A. REPORTING (312) 419-9292

75

1 sources. So they can be a source that has
2 emission units. It could be next to another
3 source that has emission units. It can be
4 considered overall as a larger source or a group
5 of stationary sources. So it's a layered
6 definition, and I certainly agree that it is
7 confusing the way they've talked about a source
8 meaning a source or a group of sources, but

9 that's just the way the federal terminology has
10 evolved.

11 MS. McFAWN: I mean, I don't suppose we
12 can try to clarify it; that we're probably better
13 off using this definition as is? Would that be
14 the Agency's opinion?

15 MR. ROMAIN: We're definitely much better
16 off not creating another entirely different
17 definition of source.

18 MS. McFAWN: Thank you.

19 I have kind of a broad question. It
20 actually may have been answered in Subpart W,
21 but, if you could, enlighten me.

22 I was reviewing Section 217.654,
23 applicability under Subpart U, and subparagraph
24 (c) is about low-emitter status, and it is

L.A. REPORTING (312) 419-9292

76

1 actually a three-page-long subparagraph.

2 Is there any reason why this was not
3 segregated out as a separate section of Subpart
4 U? If that -- let me just go on. I see Ms. Kroack
5 shaking her head, but if we did extract this, the
6 rule would work a lot --

7 MS. KROACK: More cleanly.

8 MS. McFAWN: -- more cleanly.

9 So could we extract it?

10 MS. KROACK: We could as long as we had a
11 section to put it in that was open. Frankly,
12 what happened with these rules is we followed
13 sort of the federal setup and model that are
14 outlined and in some places we incorporated by
15 reference. In some places, we put the language
16 in whole scale. When we put it in whole scale,
17 we did it because either we needed it to be
18 descriptive or we were making a minor change like
19 we did in low emitters because we allowed them to
20 opt-out if they used monitoring to opt-out in
21 addition to the default rate. So that was
22 something different from the SIP Call.

23 This is how USEPA set it up in their
24 rule. This was how the rule started in the

L.A. REPORTING (312) 419-9292

77

1 development long before I got to it, and then by
2 the time I got to it, well, the decision was just
3 to leave it look the same way that USEPA set it
4 up as much as possible and, frankly, these set of
5 rules were rules that we did not use, what we
6 would call, Illinois EPA drafting style. We let

7 the federal drafting style take this through, and
8 I agree probably it would be cleaner somewhere
9 else.

10 MS. McFAWN: But you don't think it's
11 doable?

12 MS. KROACK: Well, as you know, JCAR says
13 that we have to have the section opened at first
14 notice to modify it. We can modify it, but it
15 has to be actually opened, and unless we have
16 someplace else to put it, maybe one of the
17 reserve sections, perhaps.

18 We could refer to low emitters in 654
19 and put the provisions in 672 or 673, which we
20 reserved as opened.

21 MS. McFAWN: Well, that might be fortunate
22 that those were reserved because JCAR usually
23 does not allow us to reserve things. So I'm sure
24 they'll want us to delete those at second

L.A. REPORTING (312) 419-9292

78

1 notice. So maybe we can use it instead. Thank
2 you for the prompt.

3 Could the Agency consider doing
4 that? We will at our end, but it's always nicer
5 if the proponent does it because then we

6 understand at this point in time you're more
7 conversant with how this works and doesn't work,
8 and we wouldn't want to inadvertently mess it up.

9 MS. KROACK: I will look at it and have
10 something to both you and Bobb -- Mr. Beauchamp.

11 MS. McFAWN: Okay. Yes. Maybe at the
12 next hearing.

13 MS. KROACK: At the next -- before the
14 next hearing.

15 MS. McFAWN: Oh, excellent. Thank you.

16 I have kind of a broad question. The
17 budget -- and you've been talking about this, the
18 trading budget. There is one -- as I understand
19 it, there's one trading budget that was defined
20 by USEPA, is that correct, for allowances?

21 MS. KROACK: There was one budget defined
22 for the state of Illinois composed of so many
23 allowances, yes, and for purposes of Subparts U
24 and W, we have segregated them.

L.A. REPORTING (312) 419-9292

79

1 MS. McFAWN: The Agency has or did USEPA?

2 MS. KROACK: The Agency has. USEPA will
3 at the beginning of each control period or
4 actually every three years put in an Agency

5 account those allowances and allow us to divvy
6 them up according to our rules or whatever
7 discretion we've given ourselves, and that's --
8 but for the purposes of the rules, we've really
9 divided them to 30,701 under Subpart W and the
10 4,882 under Subpart U.

11 MS. McFAWN: Okay. Thank you.

12 And your methodology for making that
13 division is not actually reflected in these
14 rules; is that correct?

15 MS. KROACK: It's reflected in W that the
16 initial Subpart W trading pool is 30,701
17 allowances subject to adjustment, and the
18 adjustments could be for low emitters or for
19 opt-ins or there's ongoing litigation over the
20 size of the budgets, and if USEPA were to either
21 increase or decrease that, then that budget for W
22 would thereby be increased or decreased.

23 So it allows for that, and it allows
24 for division of that if those things happen. U

L.A. REPORTING (312) 419-9292

80

1 is similar except that it's a smaller pool. It's
2 4,882. The allocation methodology is different,
3 but it does provide for adjustment to the extent

4 that there are opt-ins to the extent that there
5 are low emitters to the extent that USEPA were to
6 adjust that portion of the budget, which isn't
7 expected because I don't believe that those units
8 are included in the Appalachian Power
9 litigation. I think that was strictly limited to
10 the electrical generating units, but I could be
11 wrong.

12 MS. McFAWN: But just so I'm clear on
13 this, I understand how the division of the
14 budgets, parts of it, can be changed in the
15 future, but as far as saying W gets 30,000, U
16 gets 4,000, was that an Agency decision?

17 MS. KROACK: We looked at how many, what
18 we would call, non-EGUs were within the state and
19 we proportioned the budget based on that data,
20 how many EGUs, how many non-EGUs, applied the
21 reductions from the base case, and Dick could go
22 through this. Mr. Forbes could go through this
23 much more carefully, and that's how we came up
24 with the division of those allowances.

L.A. REPORTING (312) 419-9292

81

1 Mr. Forbes, do you want to explain
2 that a little bit further?

3 MR. FORBES: I think you've done a pretty
4 good job of explaining it. The EPA is looking at
5 it as one -- as a trading program, and it's going
6 to issue allowances for those units that it has
7 defined to be subject to the trading program
8 requirements under the NOx SIP Call.

9 We have kind of looked in our rules
10 at that subdivision, and so we've defined it from
11 the overall budget that exists that EPA has
12 identified in the NOx SIP Call.

13 MS. McFAWN: Thank you.

14 If we could just revisit, again, the
15 question of defining EGU. When you spoke about
16 it earlier this morning, you were saying, well --
17 what I have heard or what I would paraphrase you
18 having said is that it would be like defining a
19 negative.

20 So I think your focus was on a
21 definition of a non-EGU. What I'm curious is why
22 we don't have a definition of EGU either in W or
23 in Part 211 because isn't an EGU for the purpose
24 of W and U the same, Subpart W and Subpart U?

L.A. REPORTING (312) 419-9292

82

1 MS. KROACK: No. We have units that are

2 combined cycle systems at what we would call
3 non-EGU sources. They both make processed
4 steam. They both serve a generator greater than
5 25 megawatts, some of which is then sold to the
6 grid, okay, whatever excess capacity they have,
7 but the primary purpose of that source is not to
8 generate power for the public consumption. It's
9 to generate processed steam and as a matter of
10 efficiency, there is some additional electrical
11 capacity that's generated.

12 MS. McFAWN: This would be what ADM
13 described at Subpart W?

14 MS. KROACK: This would be ADM, correct,
15 for example. They have a cogen system.

16 But there are some plants we know of
17 that will be constructing large, very large,
18 combined cycle systems where they will use a
19 portion of the processed steam, but the majority
20 of those units will actually be operating to
21 create electricity that's sold on the grid, this
22 area of deregulation, but those units wouldn't
23 exist if they didn't have a processed steam
24 purpose, okay, but they wanted to be included

1 under the Subpart U budget. They wanted a
2 permanent fixed allocation.

3 They agreed not to participate in the
4 Subpart W pool of allowances. The traditional
5 EGUs had no objection to that as long as they
6 didn't get allowances from both sides, and
7 basically the Agency acquiesced because it's
8 really just a matter of divvying up those
9 allowances in a way that they felt made sense for
10 their company.

11 MS. McFAWN: Thank you. That helped.

12 I still am concerned that when you
13 use the term EGU, non-EGUs, budget units, all
14 these terms, and they're not defined anywhere.

15 MS. KROACK: I think we defined budget
16 unit in both Subparts W and U in the text of some
17 of the sections as opposed to 211, again, because
18 we knew we'd have two definitions of budget unit,
19 one for W and one for U.

20 So we kept those definitions in total
21 to those sections, and we -- you know, we don't
22 define electrical generating unit. We could say
23 an electrical generation is any unit subject to
24 Subpart W or Subpart V. We didn't say that.

1 I mean, at the time when we were
2 proposing definitions, again, we knew what shape
3 U was going to have generally, but we didn't know
4 the specifics, and it was one of those issues
5 where we're drafting under real deadlines, real
6 pressures, and it's an interactive process, and
7 there are going to be a number of cleanups, we've
8 already identified, that are going to have to be
9 done to make all of these mesh completely.

10 MS. McFAWN: All right. I am
11 sympathetic. I raise these points to keep you
12 thinking about simplifying what I understand is a
13 very complex concept to describe in words and in
14 rules, I should say.

15 Well, I have other questions that go
16 to the finer points of the rule and the language
17 used. I won't belabor those. I, instead, will
18 hold them off until the next hearing and see if
19 anything comes to mind at those or in your errata
20 sheet, and I would -- I will pause now and see if
21 anyone else has any questions.

22 HEARING OFFICER BEAUCHAMP: Are there any
23 other questions for the Agency witnesses?

24 Mr. Rieser.

1 MR. RIESER: I have one more, if that's
2 all right.

3 Following up on Board Member McFawn's
4 questions regarding 211.6135, the definition of
5 source, what's the Agency's understanding of what
6 contiguous means?

7 MS. KROACK: Contiguous means adjacent or
8 lying near. It does not necessarily have to
9 touch. How far apart it has to be is obviously a
10 case-by-case decision, but it does not
11 necessarily -- contiguous does not mean it has to
12 touch. It doesn't mean that it's merely
13 separated by a roadway. It can mean -- adjacent
14 would be touching. Contiguous would mean lying
15 near.

16 MR. RIESER: What factors are used in
17 those case-by-case decisions?

18 MS. KROACK: Chris.

19 MR. ROMAINE: Case-by-case factors.
20 That's something that is much easier to address
21 with a specific situation than to address in
22 generalities, and, obviously, the Board has gone
23 through the decision for telecommunications,
24 which is one of the Seminole cases in Illinois

1 on. We would have some other examples of
2 circumstances where plants are considered that
3 are adjacent.

4 One of the examples is Acme Steel
5 which has two parts of an integrated steel mill
6 that are located seven miles away or something,
7 but because they operate in an integrated fashion
8 shipping hot metal from one facility to the other
9 and having other relationships, they have been
10 considered a single source.

11 We have sources that are much closer
12 together, but because they don't have that
13 functional relationship, they have been
14 considered separate sources. We have a
15 representative from the University of Illinois
16 present. Clearly, we have sort of a working
17 understanding that the University of Illinois is
18 a campus and notwithstanding particular streets,
19 the overall entity in Champaign is, in fact, a
20 single source.

21 MR. RIESER: Following up on the question
22 about allowances, is it accurate that there are
23 other groups of allowances, other than just the U
24 and W allowances, allowances that have been

1 segregated out for U and W?

2 MS. KROACK: There are not.

3 MR. RIESER: You talked about trading and
4 non-trading allowances.

5 MS. KROACK: I talked about a trading --
6 what I refer to as the trading budget and the
7 non-trading budget. No allowances are issued
8 for, quote, the non-trading budget. It is
9 assigned a number of tons of NOx per season.

10 MR. RIESER: So there are allocations in
11 the non-trading budget?

12 MS. KROACK: There are no -- it's not -- I
13 wouldn't determine it -- I would use the word
14 allocation and allowance to denote what happens
15 in the trading portion of the budget. The other
16 portion is what the SIP Call recognizes as
17 statewide emissions from all units emitting NOx
18 across the state, and they've recognized it and
19 identified it, but they don't make an allocation
20 for it nor do they give us any allowances for
21 that that we divvy up. Those terms are strictly
22 limited to U and W, the trading portion.

23 MR. RIESER: Thank you.

24 HEARING OFFICER BEAUCHAMP: Thank you,

1 Mr. Rieser.

2 MS. McFAWN: What you were just
3 describing, is that what comes into play in
4 Subpart X?

5 MS. KROACK: Yes. That's exactly what
6 comes into play. We haven't received any
7 allocation for any reductions that come under
8 Subpart X. We will have to receive an allocation
9 for USEPA to effectuate that process.

10 MS. McFAWN: And after you received it is
11 when you can then transfer it or assign it
12 elsewhere?

13 MS. KROACK: Correct.

14 MS. McFAWN: And just so I can kind of
15 close the loop --

16 MS. KROACK: Pardon?

17 MS. McFAWN: Just so I can kind of close
18 the loop, does that deduct from any of the
19 allowances that the recipient has assigned under
20 W or U?

21 MS. KROACK: That is a point of
22 negotiation that we're engaged in right now with
23 industry groups on X, and we haven't quite
24 resolved that language or how that's going to

1 work yet, but essentially we can only allocate
2 what we are given, and we hope to be given more
3 based on Subpart X.

4 If we are not, then the question is
5 what happens to those X reductions? Are they
6 effectuated by a reduction from our whole pool or
7 does something else happen? That's an element
8 that we're still negotiating with industry on
9 and, frankly, because of the Thanksgiving holiday
10 and how these were scheduled, we were not quite
11 able to get that resolved before today, but we
12 will be addressing that before the second
13 hearing.

14 MS. McFAWN: Is your negotiation only with
15 industry on that or is it also with USEPA?

16 MS. KROACK: Well, the next step is with
17 USEPA. Obviously, our intent, I believe, is when
18 we meet with USEPA to present a unified front on
19 this issue and full support for Subpart X because
20 actually we do believe it can work. You know, we
21 do believe it can work, and we hope to convince
22 them of that. So we're working very hard on
23 achieving that.

24 MS. McFAWN: I'll be most interested in

L.A. REPORTING (312) 419-9292

90

1 the outcome of your negotiations.

2 MS. KROACK: So will I.

3 MS. McFAWN: Perhaps, you can put it on
4 the record for us at the next hearing.

5 HEARING OFFICER BEAUCHAMP: Again, Mr. Rieser.

6 MR. RIESER: I think this is follow up on
7 Ms. Kroack's last statement. I think there was a
8 discussion that was contained in the prefiled
9 testimony, on the last page of her prefiled
10 testimony, and I believe it was page 21, and the
11 last sentence of what the testimony says is,
12 quote, since allowance allocations, except for
13 the New Source Set-Aside in both Subparts U and W
14 are made three years in advance, if USEPA did not
15 recognize the reductions, allocations by the
16 Agency for Subpart X reductions would be taken
17 from the state's unadjusted trading budget, in
18 effect, coming from the amount reserved for the
19 NSSA, New Source Set-Aside, and opt-in units.

20 Could you explain that a little bit
21 and expand on that?

22 MS. KROACK: The details of how USEPA are

23 going to make -- the mechanics, actually, of the
24 trading program are not all worked out, but it's

L.A. REPORTING (312) 419-9292

91

1 our understanding that USEPA will give the state
2 our pool of allowances to divide, which is 30,701
3 and 4,882, what is that, 35-something? Let's say
4 36,000 allowances for purposes of this
5 discussion. We are then allowed to direct how
6 those are to be allocated to the unit subject to
7 the rule, and we could have done it literally
8 anyway that we wanted to.

9 We had wide discretion in this
10 regard, but we do have to make them for the,
11 quote, existing units three years in advance. So
12 we will be telling USEPA allocate for 2004, 2005,
13 and 2006 X number of allowances for '04, '05,
14 and '06 to this unit, to that unit, identifying
15 specific units reserving a portion for the New
16 Source Set-Aside because it's done annually as
17 new sources roll into the program, and those will
18 be retained in our account until such time as
19 they are distributed.

20 The concern we were addressing here
21 was that, and we haven't quite resolved it, is

22 that if USEPA fails to make an allocation of
23 allowances for Subpart X reduction, but we
24 authorize an allocation and there's something in

L.A. REPORTING (312) 419-9292

92

1 our bank to give, it would come from allowances
2 that have already been under Subparts W and U, if
3 not promised, at least referred to as what we
4 were making available for that purpose, and we
5 could be caught, in essence, with nothing else to
6 give and having made a commitment under W and U,
7 whether enforceable or not, to generate
8 allowances for the New Source Set-Aside.

9 MR. RIESER: How does it follow that it
10 comes from U and W and not from the New Source
11 Set-Aside?

12 MS. KROACK: I'm sorry. I don't
13 understand, Mr. Rieser.

14 MR. RIESER: I'm trying to understand how
15 it follows that if you have to give allocations
16 it comes out of the U and W budgets and not the
17 New Source Set-Aside for U and W.

18 MS. KROACK: It would be -- the mechanics
19 of this aren't exactly worked out with USEPA.
20 They didn't address it in this fine of detail,

21 but if we direct USEPA to move an X number of
22 allowances from our allocation, the trading
23 budget allocation, to an X source or to whomever
24 the X source gives it to, we don't believe, but

L.A. REPORTING (312) 419-9292

93

1 we don't know this for this sure, that they're
2 going to inquire from what pool those allowances
3 should come from.

4 They don't really care. For them, a
5 ton of NOx is a ton of NOx, an allowance is an
6 allowance, and the way I would describe it is
7 USEPA is the company that issues the stock, but
8 once the stock is in the trading, it is on the
9 NASDAQ, and it gets traded freely, but you only
10 get what the company gave you, and to the extent
11 that we've retained anything and we say, give X
12 number of allowances or shares to such and such a
13 company, to the extent they've created them and
14 they recognize them, they don't really care where
15 they're going to. They don't care whether they
16 are being made for Subpart W, Subpart U, Subpart
17 X. They're not going to engage in that level of
18 inquiry.

19 MR. RIESER: But under the Subpart U

20 regulations, which were second notice by the
21 Board under the Subpart W and under the U
22 regulations which are being discussed here, in
23 certain -- in the appendices to those two
24 regulations, a certain number of shares of stock,

L.A. REPORTING (312) 419-9292

94

1 if you will, or allocations have been very
2 specifically assigned to specific companies by
3 regulation. By regulation, they've been assigned
4 to those companies.

5 A certain additional number, five
6 percent for each rule, regulation, have been set
7 aside and left in the pool for the Agency to
8 assign to new sources.

9 I guess my question is, in the
10 situation where the USEPA doesn't provide
11 additional allocations to match up with the
12 Subpart X generated allocations, if I could call
13 them that, why would that come from the
14 designated -- from the allocations that have
15 already been designated under Appendix F and
16 Appendix E and not from the New Source
17 Set-Aside?

18 MS. KROACK: What we have -- what I'm

19 concerned that we have, but I don't know that we
20 have, is a disconnect between what we've agreed
21 to do in rules versus the mechanics of the
22 trading program which we neither administer nor
23 direct. We merely authorize USEPA to make an
24 allocation. They don't engage in this level of

L.A. REPORTING (312) 419-9292

95

1 inquiry.

2 MR. RIESER: But the mechanics of the
3 trading program wouldn't modify what the Board
4 assigns in its regulations other than as the
5 Board has laid out? In other words, the
6 Appendix F and E allocations are established
7 except for that one condition that says
8 essentially if the Appalachian Power is more or
9 less, then you adjust that pro-rata. Those are
10 assigned at least for the first three years.

11 So I'm still unclear as to how
12 anything dealing with X would change the
13 assignment of those allocations that have already
14 been made or are about to be?

15 MS. KROACK: Again, I'm not sure that it
16 would. I'm not sure that it would. The problem
17 is you would have U, W, and X which could be

18 inconsistent or could be read consistently to
19 have X modify the allocations or the allowances
20 that we committed or agreed or whatever level of
21 commitment are made in those rules have said that
22 we were going to distribute. I don't know that
23 that's going to happen. I just believe that we
24 have a bit of a disconnect between U, W, and X on

L.A. REPORTING (312) 419-9292

96

1 this point.

2 MR. RIESER: Is there specific language
3 under X that would cause this thing that you're
4 concerned about happening? Is there specific
5 language you're looking to that would tell
6 USEPA -- I'm sorry, that would tell the IEPA that
7 they had to assign allocations in a certain way
8 that is inconsistent with U and W?

9 MS. KROACK: The way the proposal is
10 currently drafted, we tried to avoid that
11 situation. However, those provisions are still
12 under discussion. I don't know what the final
13 language is going to look like. So I can't
14 answer that question with confidence.

15 MR. RIESER: Okay. Thank you.

16 HEARING OFFICER BEAUCHAMP: Thank you,

17 Mr. Rieser. Further questions for the Agency
18 witnesses?

19 MS. LIU: I had a question. Good
20 morning. To follow up on what Member McFawn and
21 Mr. Rieser had asked earlier and kind of provide
22 the bigger perspective, how many total number of
23 NOx allowances or allotments were given to
24 Illinois, including the trading and the

L.A. REPORTING (312) 419-9292

97

1 non-trading portion?

2 MR. LAWLER: 35,583.

3 MR. ROMAINE: That's the number of
4 allowances for the trading program

5 MR. LAWLER: For the trading program.

6 MS. LIU: How about the non-trading?

7 MR. ROMAINE: That's the only allowances.
8 The other is simply the budget. Do you want to
9 know now the overall state budget of NOx?

10 MS. LIU: Yes.

11 MS. KROACK: It's a big number.

12 MR. FORBES: The statewide budget is
13 270,560 tons per season. That's USEPA's 2007
14 budget for the state of Illinois.

15 MS. LIU: So the non-trading portion would

16 be that number minus the 30,701 minus the 4,882?

17 MR. ROMAINE: That's correct.

18 MR. FORBES: Yes.

19 MS. LIU: What types of sources would be
20 included in the non-trading budget?

21 MR. FORBES: Well, the total statewide
22 budget includes emissions from all sectors, that
23 is, area sources, the mobile source on-road and
24 off-road emission sectors, as well as the point

L.A. REPORTING (312) 419-9292

98

1 source sector, which includes EGUs and non-EGUs.

2 MS. LIU: Would some practical examples of
3 those be cars, airplanes, lawnmowers?

4 MR. FORBES: Area sources would be such
5 things as household painting, use of various
6 kinds of volatile organic materials by
7 households. For mobile sources, on-road
8 emissions would be cars, buses, trucks. Off-road
9 sources would be things like airplanes, trains,
10 and other equipment, construction equipment,
11 things that would not be driven on the highway.
12 I think points -- the stationary sources, you're
13 aware of what those would be.

14 MS. LIU: Okay. Does the Agency

15 anticipate addressing those kinds of sources
16 through the NOx SIP Call or is that what the
17 provision under Subpart X is trying to do?

18 MR. FORBES: We're not anticipating doing
19 specific control measures for those other
20 categories. USEPA, when it did the NOx SIP Call,
21 it reviewed all of those emission categories and
22 focused on the stationary sources as being the
23 primary sources of NOx that it felt it needed to
24 control.

L.A. REPORTING (312) 419-9292

99

1 Mobile sources are controlled under a
2 whole federal motor vehicle control program.
3 Generally, we talk about it in terms of VOC, but
4 NOx emissions are also part of that control
5 program, cleaner vehicles, cleaner emissions
6 through cars and buses and trucks. There's a lot
7 of -- just multiple numbers of federal
8 regulations that are on the books and are
9 currently coming onto the books to control diesel
10 emissions and other things that will affect NOx.

11 So at this point in time, Illinois is
12 following the federal lead in looking at those
13 categories that it identified as being the

14 primary sources that needed to be controlled for
15 this particular program.

16 MS. LIU: Thank you.

17 What procedures would a non-source
18 have to follow in order to purchase their
19 allowances?

20 MS. KROACK: There are -- a non-source
21 doesn't have to purchase allowances. If they're
22 not subject to the trading program, they're not
23 required to hold allowances, but environmental
24 groups, for example, could open an account.

L.A. REPORTING (312) 419-9292

100

1 They'd have to get an account representative.
2 They'd have to make certain certifications. They
3 could buy allowances in the trading program and
4 retire them for the benefit of air quality if
5 they so elected and a private citizen could do it
6 as well. It's not envisioned that that's
7 probably going to happen, but it's certainly
8 appropriate in the program.

9 MS. McFAWN: Could they do that under the
10 rules as drafted?

11 MS. KROACK: They wouldn't need to under
12 our rules. Our rules don't require them to hold

13 an allowance. So their decision to purchase
14 allowances would not be subject to any
15 regulation, but they could certainly do it under
16 the federal trading program.

17 MR. ROMAINE: And that would be the point
18 is that the purchase and the transfer of
19 allowances is addressed by the federal trading
20 program, not by the individual states.

21 MS. McFAWN: And that's in Part 96?

22 MS. KROACK: Correct.

23 MR. ROMAINE: Yes.

24 MS. McFAWN: Thank you.

L.A. REPORTING (312) 419-9292

101

1 MS. LIU: That's all I have.

2 HEARING OFFICER BEAUCHAMP: Thank you, Ms. Liu.

3 Are there any further questions for
4 the Agency witnesses? Again, Mr. Rieser.

5 MR. RIESER: I'm sorry. I hate to keep
6 coming back to this, but going back to the
7 discussion that Ms. Kroack and I had about
8 Subpart X, is there a language in -- is there
9 language or a section in Subpart X as it's
10 currently drafted that talks about
11 how -- the mechanism by which the reductions that

12 occur, voluntary reductions that a Subpart X
13 source has, how they get translated into
14 allocations?

15 MS. KROACK: Yeah. There are a couple of
16 provisions actually, and I'm trying to find my
17 cheat sheet on that. If I have to look through
18 it, I will. I just had this slip of paper.

19 HEARING OFFICER BEAUCHAMP: Would you like
20 a few moments to find it, Ms. Kroack?

21 MS. KROACK: Yeah. If you give me one
22 minute, I'll be able to locate it.

23 HEARING OFFICER BEAUCHAMP: Let's go off
24 the record while she looks briefly.

L.A. REPORTING (312) 419-9292

102

1 (Brief pause.)

2 HEARING OFFICER BEAUCHAMP: We can go back
3 on the record then. Ms. Kroack.

4 MS. KROACK: I believe the last question
5 was where in Subpart X we attempt to address the
6 issue of USEPA being necessary -- a precondition
7 for USEPA to give us allowances before we can
8 allocate them.

9 We address it in four separate
10 sections. In 217.800, we say verifiable,

11 quantifiable, and federally enforceable emission
12 reductions, meaning the requirements of the
13 subpart and for which allowances are allocated
14 will be transferred by the Agency from a
15 non-trading portion of the statewide budget as
16 established in the so-called NOx SIP Call site to
17 either the EGU or non-EGU portion of the NOx
18 trading budget as applicable. We say it there.

19 We say it in section 805 in the
20 introduction. We don't say it in 805. I think
21 that's a misstatement. I'm sorry. We say it in
22 Section 815 in the introduction. Again,
23 quantifiable, verifiable, and enforceable NOx
24 emission reductions for which allowances are

L.A. REPORTING (312) 419-9292

103

1 issued will be shifted from the non-trading
2 portion of the statewide NOx budget to the NOx
3 trading budget only for those NOx emission
4 reductions that meet one or more of the following
5 criteria. So we say it there as well.

6 We say it, again, in Section
7 217.840(c). If the Agency approves the proposal,
8 and that's referring to the NOx emission
9 reduction proposal, and such provisions of

10 Subsection (b) of the section, the Agency shall
11 allocate any allowances issued by USEPA in
12 accordance with either Subpart W or Subpart U of
13 this part in the following. So we say it in
14 three places for which you are given allowances.
15 We will make these allocations, and those are the
16 provisions, Mr. Rieser, that address your point.

17 MR. RIESER: Okay. Thank you very much.

18 HEARING OFFICER BEAUCHAMP: Thank you,
19 Mr. Rieser.

20 I'm looking for any more questions
21 for the Agency witnesses.

22 MS. McFAWN: I have a couple clean-up
23 questions, if you'll bear with me.

24 At Section 217.672, I believe it is,

L.A. REPORTING (312) 419-9292

104

1 early reduction credits for budget -- yes.
2 That's 670. I'm sorry. The very last paragraph,
3 subparagraph (j), you talk about banked
4 allowances.

5 MS. KROACK: Yes.

6 MS. McFAWN: Now, it's very likely that I
7 didn't find it, but this is the first time I ran
8 into this term and wondered if we need a

9 definition or an explanation or maybe not?

10 You can defer that until a later
11 time, if you like.

12 MS. KROACK: We didn't define it because
13 we were referring to the section of the Code of
14 Federal Regulations that addresses this, and so
15 we didn't define, quote, what a banked allowance
16 was.

17 MS. McFAWN: All right. I suspected that
18 was why.

19 Right under that in Section 217.674,
20 opt-in unit, you use the term stationary internal
21 combustion engine, and we've been told today that
22 that has been deferred due to judicial decision,
23 but do we need a definition of that? Is there
24 one?

L.A. REPORTING (312) 419-9292

105

1 MS. KROACK: There may be one.

2 MS. McFAWN: I didn't check.

3 MS. KROACK: We will check on that and get
4 back to you.

5 MS. McFAWN: All right.

6 MS. KROACK: But I can say that we didn't
7 define it for purposes of the NOx SIP Call

8 because of the whole discussions that I see
9 mentioned and how to define it for purposes of
10 applicability. So that's the reason we didn't go
11 into a more expansive definition.

12 MS. McFAWN: Okay. Under Subpart X, there
13 are provisions for the Agency to deny or
14 withdraw.

15 Under what conditions would you deny
16 or withdraw one of these alternatives?

17 MS. KROACK: We had initially had language
18 in there that was a lot simpler, but industry
19 presented us with provisions if they wanted to
20 withdraw orderly and subject to some requirements
21 because those allowances may, in fact, be relied
22 upon by a source for compliance with their
23 Subpart U or W obligations.

24 So while we'll let a source withdraw,

L.A. REPORTING (312) 419-9292

106

1 we want to make sure that that source who has
2 been relying on those reductions has some notice
3 of it, has some -- knows that the withdrawal is
4 going to take place so that they can account for
5 those reductions, and that the permit was
6 withdrawn and all the provisions affecting the

7 source to which they may have been transferred to
8 is also on the same page as the source that was
9 making the reductions.

10 MS. McFAWN: Okay. So this was really to
11 anticipate the disagreement between the entity
12 making the reduction and the entity -- a
13 different entity receiving the benefits of that
14 reduction?

15 MS. KROACK: Correct.

16 MS. McFAWN: And my last question is, I'm
17 most curious to see your errata sheet, and I
18 wondered if you knew if that would be provided
19 shortly?

20 MS. KROACK: I would say before Friday.

21 MS. McFAWN: Oh, excellent, because I
22 found some typos and things that I think might be
23 in error.

24 MS. KROACK: There are a number of them.

L.A. REPORTING (312) 419-9292

107

1 MS. McFAWN: And then rather than belabor
2 those here, I would like to cross-check it
3 against your errata sheet, and then would you --
4 I know that the purpose of our next hearing is to
5 take questions and testimony from participants or

6 the affected entities.

7 Are you going to be available to
8 answer further questions from the Board, not the
9 entire panel here, but some of you?

10 MS. KROACK: If that's necessary, I'll be
11 available and Mr. Lawler will be available. I'm
12 not sure how many members of the panel, but at
13 least the two of us.

14 MS. McFAWN: That would be nice if you
15 were just to tie up some loose ends since we're
16 on such a tight time frame on this.

17 MS. KROACK: Sure.

18 MS. McFAWN: That was all I had.

19 HEARING OFFICER BEAUCHAMP: Thank you,
20 Member McFawn. Are there any other questions for
21 the Board -- I'm sorry, for the Agency today?

22 Seeing none, I guess we'll move to
23 conclude the proceedings. Please note that the
24 second hearing for this rulemaking is scheduled

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108

1 for Wednesday, December 20th, 2000, beginning at
2 9:30 a.m. in room 2-025 in the James R. Thompson
3 Center. The address is 100 West Randolph Street
4 in Chicago.

5 The third hearing is scheduled for
6 Wednesday, January 3rd, 2001, at 9:30 a.m. in
7 room 9-040 of the James R. Thompson Center. The
8 hearing officer order contains the prefiling
9 deadlines for both of those hearings.

10 Just note that for the second
11 hearing, prefiled testimony is required to be
12 filed with the Board at least ten days before the
13 hearing. That would make it the 10th, which is a
14 Sunday. So prefiled testimony for the second
15 hearing will be required to be filed with the
16 Board on December 8th.

17 If the Agency does not request a
18 third hearing, the Board will cancel the third
19 hearing. We have requested an expedited
20 transcript for today's hearing. That will be
21 available on Monday. You can get a copy from the
22 court reporter or you may request a hard copy
23 from the Board. The Board charges 75 cents per
24 page.

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109

1 Additionally, the Board will post the
2 transcript to our web site located at
3 www.ipcb.state.il.us. We expect to have the

4 transcript posted to the web site next Tuesday or
5 Wednesday of next week.

6 I'd like to take a moment to remind
7 the Agency that any issues which the Agency has
8 agreed to address at some of the parties shall
9 be -- or at the request of some of the parties
10 shall be answered at the beginning of the second
11 hearing on December 20th. I hope to see you all
12 again on that date in Chicago.

13 Are there any matters that need to be
14 addressed at this time? Seeing none, this matter
15 is hereby adjourned. Thank you for your
16 attendance and participation at this hearing.

17 (Whereupon, these were all the
18 proceedings held in the
19 above-entitled matter.)
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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I, GEANNA M. IAQUINTA, CSR, do
hereby state that I am a court reporter doing
business in the City of Chicago, County of Cook,
and State of Illinois; that I reported by means
of machine shorthand the proceedings held in the
foregoing cause, and that the foregoing is a true
and correct transcript of my shorthand notes so
taken as aforesaid.

GEANNA M. IAQUINTA, CSR
Notary Public, Cook County, IL
Illinois License No. 084-004096

SUBSCRIBED AND SWORN TO
before me this ____ day
of _____, A.D., 2000.

Notary Public