

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3

 IN THE MATTER OF:)

4

)

 PROPOSED NEW 35 ILL. ADM. CODE)

5

 217 SUBPART U, NOx CONTROL AND)

 TRADING PROGRAM FOR SPECIFIED)

6

 NOx GENERATING UNITS, SUBPART X,) R01-17

 VOLUNTARY NOx EMISSIONS REDUCTION)

7

 PROGRAM, AND AMENDMENTS TO)

 35 ILL. ADM. CODE 211)

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10 The following is the transcript of a hearing

11 held in the above-entitled matter taken stenographically

12 by MICHELE J. LOSURDO, CSR, a notary public within and

13 for the County of DuPage and State of Illinois, before
14 BOBB BEAUCHAMP, Hearing Officer, at 100 West Randolph
15 Street, Chicago, Illinois, on the 20th day of December,
16 2000, A.D., commencing at 9:35 a.m.

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1 HEARING TAKEN BEFORE:

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ILLINOIS POLLUTION CONTROL BOARD

3 BY: MR. BOBB BEAUCHAMP

100 West Randolph Street

4 Suite 11-500

Chicago, Illinois 60601

5 (312) 814-3665

6 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:

7 Marili McFawn

Alisa Liu

8 Nicholas J. Melas

Joel J. Sternstein

9

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS

10 PRESENT:

11 Alec Messina

Dennis A. Lawler

12

Chris Romaine

Laurel Kroack

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

10 Today's hearing is the first day of the

11 second of three scheduled hearings in this rulemaking.

12 Present today on behalf of the Illinois Pollution

13 Control Board and seated to my right is Marili McFawn --

14 MS. McFAWN: Good morning.

15 HEARING OFFICER BEAUCHAMP: -- the Board member

16 making this ruling. Seated to my left is Board Member

17 Nick Melas, to his left is his assistant, Joel

18 Sternstein and to Ms. McFawn's right is Alisa Liu, a

19 member of the Board's technical staff. I've placed

20 copies of the notice and service list sign-up sheets on

21 the table at the front here. If your name is on the

22 notice list, you will only receive copies of the Board's

23 opinions and orders and all hearing officer orders. If

24 your name is on the service list, not only will you

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1 receive copies of the Board's opinions and orders and
2 all hearing officer orders, but you will also receive
3 copies of all documents filed by all persons in this
4 proceeding.

5 However also keep in mind that if your name
6 is on the service list, you are also required to serve
7 all persons on the service list with all documents filed
8 with the Board. Copies of the Board's October 19th,

9 2000, opinion and order containing the proposed rule and
10 the October 27th, 2000, hearing officer order are also
11 located at the table in the front. You could also find
12 copies of the prefilled testimony for today, copies of
13 the current notice and service list and all copies of
14 the letters regarding DECCA and the Board's request to
15 DECCA.

16 On October 16th, 2000, the Illinois
17 Environmental Protection Agency filed this proposal for
18 the rulemaking to add 35 Illinois Administrative Code
19 217 Subpart U, NOx Control and Trading Program Specified
20 NOx Generating Units, Subpart X, Voluntary NOx Emissions
21 Reduction Program and Amendments to Illinois
22 Administrative Code 211.

8 Under Section 27B of the Act, the Board shall
9 request the Department of Commerce and Community
10 Affairs, which I'll refer to as DECCA, to conduct an
11 economic impact study on certain proposed rules prior to
12 adoption of those rules. DECCA may produce a study of
13 the economic impact of the proposed rules within 30 to
14 45 days of the Board's request. The Board must make an
15 economic impact study or DECCA's explanation for not
16 conducting the study available to the public at least 20
17 days before a public hearing on the economic impact or
18 prosed rules.

19 In keeping with Section 27B, the Board is
20 requested by a letter dated October 26th, 2000, that
21 DECCA conduct an economic impact study for this

22 rulemaking. In addition to requesting that DECCA
23 conduct an economic impact study, the letter requested
24 that DECCA notify the Board within ten days after

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1 receipt of that request whether DECCA intended to
2 conduct an economic impact study. The Board further
3 noted that if it did not receive such notification, the
4 Board would rely on the March 10th, 2000, letter as the
5 required explanation for not conducting an economic
6 impact study.

7 The March 10th, 2000, DECCA letter notified
8 the Board that DECCA would not be conducting economic
9 impact studies on rules pending before the Board because
10 DECCA lacked the staff and the financial resource to
11 conduct such studies. The ten days for DECCA to notify
12 the Board has expired and the Board has not received any
13 notification from DECCA that it will conduct an economic
14 impact study on this rulemaking.

15 Accordingly, the Board has relied on the
16 March 10th, 2000, letter as DECCA's explanation for not
17 producing an economic impact study. DECCA's March 10th,
18 2000, letter, as well as the Board's October 26th, 2000,
19 letter to DECCA requesting an economic impact study be
20 conducted are available for review at the Board's

21 Chicago office, Office of the Clerk, James R. Thompson
22 Center, 100 West Randolph, Suite 11-500, Chicago,
23 Illinois. As I said earlier, copies are available at
24 the table in the front.

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1 The Board holds this hearing for the public
2 to comment on DECCA's explanation for not conducting an
3 economic impact study in this rulemaking and also for
4 the purpose of presenting testimony, documents and
5 comments by affected entities and other interested

6 parties. Like other Board regulatory hearings, any
7 person who testifies will be sworn and subject to
8 questioning. Moreover, this hearing will be governed by
9 the Board's procedural rules for regulatory proceedings.
10 All information which is relevant and not repetitious or
11 privileged will be admitted.

12 The third hearing currently is scheduled for
13 Wednesday, January 3rd, 2001, beginning at 9:30 a.m. in
14 room 9-040 of the James R. Thompson Center. It will be
15 devoted solely to any Agency response to the new
16 material submitted at the second hearing. The third
17 hearing will be canceled if the Agency indicates to the
18 Board if it does not intend to introduce any additional
19 material. If the third hearing is canceled, all persons

20 listed on the notice list will be so advised with a
21 hearing officer order.

22 As stated in the October 19th, 2000, opinion,
23 the Board is holding today's hearings consecutively with
24 the hearing in docket number R01-16 in the matter of

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1 Proposed Amendment to 35 Illinois Administrative Code
2 217 Subpart B Electric Power Generation. The second
3 hearing in R01-16 concluded yesterday and the third
4 hearing has been canceled at the request of the Agency.

5 The public comment period for R01-16 closes 14 days
6 after the transcript becomes available which should be
7 at 4:30 p.m. on January 5th, 2001.

8 Our order that we're going to proceed with
9 today will be to present the testimony of those parties
10 who prefiled testimony with the Board and one additional
11 party has requested to present testimony this morning.

12 At the conclusion of that, we will have the Agency come
13 forward and present a motion that they would like into
14 the record and also address any other matters that we
15 need to raise today.

16 Are there any questions regarding the
17 procedure we will be following this morning? Seeing
18 none, at this time I would like to ask Board Member

19 McFawn if she has any other comments she would like to

20 add.

21 MS. McFAWN: I'd like to welcome you all to this

22 rulemaking and thank you for coming to the second

23 hearing and let's proceed.

24 HEARING OFFICER BEAUCHAMP: Before we begin with

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1 the prefiled testimony and other testimony, is there

2 anyone here who would like to comment on the lack of an

3 economic impact study in this matter? Seeing none,

4 let's begin with our testimony. As I mentioned earlier,
5 we have three parties that we are going to be hearing
6 from this morning. The order that we're going to be
7 asking to come before the Board will be first Mr. Sidney
8 Marder from the Illinois Environmental Regulatory Group,
9 second will be Mr. Lyle Wachtel from the University of
10 Illinois and third will be Mr. Richard Zavoda from LTV
11 Steel.

12 Mr. Marder, if you're prepared. After we
13 have the court reporter swear you in, if you have any
14 written testimony that you'd like entered into the
15 record, if you make a motion to do so and we will mark
16 that as an exhibit and enter it into the record.

17 Will you swear him in?

18 (Witness duly sworn.)

19 MR. MARDER: I previously filed prefiled
20 testimony with the Board and I'd ask that that be
21 incorporated into the record as an exhibit.

22 HEARING OFFICER BEAUCHAMP: We have a motion to
23 admit Mr. Marder's prefiled testimony. Are there any
24 objections? Seeing none, we will mark that as Exhibit 4

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1 and admit it into the record.

2 MR. MARDER: Thank you. I appreciate the

3 opportunity to testify before the Board today. I will
4 be briefly paraphrasing and summarizing testimony I
5 filed and then would be available to answer any
6 questions the Board or anybody else may have. Good
7 morning. My name is Sidney Marder. I am an
8 environmental consultant to the Illinois Environmental
9 Regulatory Group and the Illinois State Chamber of
10 Commerce. I appreciate this opportunity to testify
11 before the Board this morning.

12 ERG has been involved in this proceeding and
13 the other NOx hearings -- other NOx proceedings for
14 years now. One of our roles was as the lead negotiator
15 with the Agency on this Subpart U and Subpart X
16 regulations. Importantly, ERG also was a primary

17 negotiator and drafter of Section 9.9 of the Illinois
18 Environmental Protection Act which is the legislation
19 that among other things requires the adoption of
20 regulations similar to Subpart X, which is a subject of
21 this proceeding.

22 The negotiations with the Board were long,
23 they were complex and I'm pleased to report very
24 successful. It was a good, honest interchange. The net

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1 result is that the regulated community, almost all of

2 which are represented by the Illinois Environmental
3 Regulatory Group, are in concurrence with the final
4 product that has evolved under Subpart U. As regards to
5 Subpart X, there are some areas of disagreement
6 remaining which after negotiation I think both parties
7 said let's discuss our differences before the Board and
8 ask them to make a decision. Those are the areas which
9 will be the thrust of my testimony today.

10 As the Board is aware, these regulations will
11 impose essentially an absolute cap on the total NOx
12 emissions that a class or classes of sources, emission
13 sources, would be allowed to emit during the controlled
14 season and more importantly that cap is perpetual so
15 that the amount of NOx emissions will remain constant

16 regionally. Imposing this type of a cap is very similar
17 to taking the new source review offset provisions and
18 imposing them on a region-wide basis and that is in our
19 opinion quite a major shift in environmental control,
20 but one we understand we're going to have to accept.

21 The flip side or the caret of this type of
22 regulatory scheme is that a trading program is set up
23 which allows for the cap to be met in one additional way
24 and that would be by trading rather than purchasing or

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1 obtaining an offset on a permanent basis. You could go
2 in and out of the system by trading. The Board is well
3 aware of that. While we welcome this option, we would
4 attempt to assure that it is conducted -- the trading
5 program is conducted with the maximum flexibility
6 allowed.

7 When we entered negotiations with the Agency,
8 after a lot of discussions internally with our own
9 members, we laid out a number of principles that form
10 the basis for at least the industrial community or the
11 regulated community's principles for negotiation. We
12 wanted to increase the flexibility of the trading
13 program to the maximum extent possible. We wanted to be
14 the group that would propose the allocation system to

15 the Agency rather than have them impose it to us. That
16 would allow us to determine who could reduce how much
17 with the understanding that the allocation system was
18 going to meet the baseline established by USEPA.

19 We would not propose -- the third principle
20 is we would not propose anything that we felt would be
21 unapprovable by USEPA on its face. That wouldn't serve
22 anybody's interest, but we recognize that there are
23 opportunities to convince the USEPA that changes from
24 the verbatim trading program could be approvable and

1 finally we wanted to maximize the flexibility envisioned
2 by the General Assembly when it adopted Section 9.9 of
3 the Environmental Protection Act. We felt that was very
4 important in that allocations could be very difficult to
5 come by and that problem will become more severe as time
6 goes by.

7 Having said that, after the negotiations on
8 Subpart X, there were three areas of concern that
9 remained. The first area of concern was the Agency's
10 proposal limits the applicability of Subpart X to units,
11 emission units, that were permitted to operate prior to
12 1995. The second area of concern dealt with the
13 Agency's -- the provision in the Agency's proposal that

14 would require a percentage of emission -- of emission
15 reductions -- would require that a percentage of
16 emission reductions be retired rather than granted
17 100 percent and the third is some discussion and
18 clarification of how the NOx sourcewide cap would apply
19 under Subpart X.

20 I would ask the Board's permission to modify
21 my testimony on its face. This was done rather
22 hurriedly and we had 60 -- probably 20 members
23 commenting. On the bottom of page 4, I have some
24 parenthetical language that is in the last line and goes

1 on to the top of page 5, that language I would like to
2 have struck and I'll explain why.

3 Our overall position on this particular
4 issue, which deals with Section 217.805C, is that we
5 would like the Board to strike that particular
6 provision. The confusion centered on a sort of an
7 anomaly. There are cases where units may have been
8 operating in 19 -- prior to 1995, but didn't have an
9 operating permit. They may have been operating under a
10 construction permit.

11 This was raised by one of our members as a
12 possible problem in the event the Board does not agree

13 with us. We have no control as to when the Agency
14 grants an operating permit. We only have control over
15 when we submit an application, so our unit may have been
16 operating under a construction permit, but those NOx
17 emissions may have been in the '95 inventory, but yet
18 that unit may not have obtained an operating permit.
19 That was the thrust of that concern, but it is clearly a
20 secondary concern.

21 HEARING OFFICER BEAUCHAMP: The language that you
22 want struck, would you like me to just cross it out on
23 the entered exhibit?

24 MR. MARDER: Just cross it out if you will.

1 Thank you.

2 The net effect of the Agency's position would
3 be that any unit which commenced operation after 1995
4 would not be eligible for Subpart X and that creates a
5 problem in our mind for a number of reasons not the
6 least of which is that allocations may, indeed, be
7 difficult to come by and as time goes by, these
8 post-1995 units, even though they may not be shut down
9 now since they're relatively new, 10 or 15 years from
10 now the cap is still in place, those units may well
11 become candidates for inclusion in the Subpart U or W

12 NOx baseline.

13 It's important to note that the analogous
14 program which was set up directly by USEPA, the opt-in
15 program, contains no such requirement that units have
16 operated -- that units have been operating prior to
17 1995. That would indicate to us that the USEPA would
18 not object to this kind of a provision. In reviewing
19 this, we'd ask the Board to pay attention really to two
20 issues which we believe are the key here. Number one,
21 are emissions from post-1995 units verifiable, are they
22 quantifiable, can they be federally enforceable and do
23 they constitute real reductions?

24 If all of those questions can be answered

1 yes, and we think they certainly can, then there seems
2 to be no reason to exclude them. Accordingly, we would
3 ask that the Board strike the prohibition that is
4 included in the Agency's proposal. If the Board were to
5 do that, we would ask that you also take a look at
6 Section 217.825B and make that regulation consistent
7 with the change we're requesting. That particular
8 regulation deals with how you determine credible
9 emissions and would have to be modified to strike A and
10 B, the terms A and B in 217.825 allowing you to use the

11 Sub-C type of determination as well. That will become
12 clear as the Board reviews it.

13 Our second area of difference, if you will,
14 is that the Agency's proposal limits the amount of
15 credible emissions from both shutdowns and restricted
16 operations Subpart X units to 80 percent of the
17 emissions actually reduced. Once again, these
18 allocations may be hard to come by and if they are, this
19 is just one more reduction of the overall pot. It
20 appears that the Agency's rationale for this provision
21 hinges on the lack of part 75 monitoring requirements
22 under Subpart X.

23 We would emphasize that this does not mean
24 that there won't be monitoring. It means that you

1 wouldn't use the specific of Subpart X monitoring --
2 Subpart 75 monitoring. We would be using the type of
3 monitoring which is currently used by units to fulfill
4 their obligations under a wide range of federally
5 approved programs, New Source Review, PSD, ERMS,
6 et cetera, Title V programs, and we're hard-pressed to
7 understand why this is such a major issue.

8 In most cases Subpart X units will withdraw
9 their permit and simply shut down. In that instance,

10 the issue of a 20 percent reduction in credits in our
11 mind is even less credible. In the case of a shutdown,
12 monitoring is not really an issue. Simply what has to
13 happen is the parties have to agree on what the baseline
14 is and then after the shutdown. You're measuring zero
15 taking it away from the baseline. There's nothing to
16 monitor. The unit isn't operating, so it really isn't
17 an issue and the way the Agency has structured this,
18 it's not really an issue in establishing the baseline.

19 This is going to be a tough program to comply
20 with now and in the future and we would ask that the
21 Board consider that when reviewing this provision. We
22 would urge the Board to strike the second and third
23 sentences of the Agency's proposed 217.825 A and B, and

24 that would affect what we are asking for.

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1 The third area not of disagreement, but
2 hopefully of clarification, deals with the NOx cap
3 provisions which are included in various places of the
4 Subpart X regulations in particular 217.810(a)(2). That
5 particular provision provides that all like-kind of or
6 same type emission units be subject to an overall cap.

7 The Board should be aware that this cap
8 concept was the subject of negotiations and it's a lot

9 closer to what we can accept then it was when we started
10 the discussions. I think it was a fair and honest
11 exchange between the parties. In fact, it is something
12 we can accept as written. We just want to make sure
13 it's interpreted in accordance with what we believe the
14 negotiations were all about.

15 I would add and it's important to note that
16 there is no such companion regulation in the federal
17 opt-in program. Someone can opt-in a source and that
18 would not affect their operations on any non-nontrading
19 unit operations, so this is something that is added to
20 X, but does not appear, if you will, in the analogous
21 federal program.

22 The issue that was discussed when the concept

23 of a cap was raised was we want to find a way so that a
24 person who generates X reductions, X -- Subpart X unit

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1 reductions would not be simply, if you will, gaming the
2 system, that someone would not be reducing emissions on
3 the one hand and then increasing them on the other to do
4 the same thing that they were doing before they made the
5 reduction and I think we all agree with that concept.

6 The question is we know what we want to prevent, but how

7 do we really define what we're trying to prevent. The

8 language that got into the proposed regulation was the
9 term production shifting.

10 The next key ingredient in the negotiated
11 language was, well, we're going to have to decide what
12 this is on a case-by-case basis. We agree. It will
13 have to be done on a case-by-case basis no matter how
14 many -- no matter how many case studies or examples I
15 provide or no matter how many case studies or examples
16 the Agency provides, there's always going to be a shade
17 of gray and there's always going to have to be a
18 decision made ultimately by the Agency -- well,
19 preliminarily by the Agency, ultimately by the Board or
20 the courts if it gets there and we don't anticipate this
21 happening very often.

22 When I read the transcript and noted

23 Ms. Kroack's answer to Ms. Hirner's question, I said we

24 better take a look at this and see if we can at least

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1 provide some guidance to the regulated community, to the

2 Agency and to the Board if it comes up on review as to

3 what kind of a benchmark can we have that one would

4 measure whether this is or is not production shifting.

5 Production shifting occurs, in our opinion,

6 when NOx emissions which resulted from a unit used to

7 produce a product or service are reduced or terminated
8 and transferred to a Subpart U or W unit and then the
9 emissions from a new unit or increased emissions from an
10 existing unit are used to make the same product or
11 provide the same service, take it away and put it right
12 back in. That has to be prevented. What we attempted
13 to do is add language which we're suggesting the Board
14 include in the proposal and that language is found at
15 page 12 of my testimony. I won't read it. It's in the
16 record.

17 As has been the case in all of our
18 negotiations, we are not married to specific wording.
19 We are engaged to a certain concept. We are more than
20 willing to work with the Agency between now and the

21 close of the record. If there are differences in the
22 wording -- this was done at the last minute obviously,
23 but I would stress the concept is very important that
24 the growth cap -- excuse me -- that the emission cap

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1 which is intended to prevent gaming the system does not
2 become a cap to prevent the equitable economic use of a
3 permittee's property and that's our overall concern.

4 There was another issue that was in dispute
5 between the Agency and the regulated community. I've

6 had an opportunity to review the errata sheet that's
7 going to be presented by the Agency. With the inclusion
8 of that language, our last issue has been resolved. We
9 feel that the language they're providing is an equitable
10 solution to a difficult problem. That concludes my
11 summary. I'll be glad to answer any questions you may
12 have.

13 HEARING OFFICER BEAUCHAMP: Thank you very much,
14 Mr. Marder. As we take questions, I indicate to you
15 please identify yourself and the organization you
16 represent, if any, and we open the floor to questions
17 for Mr. Marder.

18 MR. MESSINA: My name is Alec Messina with the
19 Illinois Environmental Protection Agency and I just have

20 a few questions. If I could first call your attention
21 to page 7 of your prefiled testimony. You state that
22 there is no margin of error in terms of emission
23 reductions from a Subpart X unit that shuts down, and my
24 question is isn't it true that the emission of those

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1 units are -- they're often determined by emissions
2 factor contained in USEPA AP 42 document rather than
3 monitoring of actual emissions?

4 MR. MARDER: Yes.

5 MR. MESSINA: My next question would then be have
6 you ever quantified or are you aware of any studies that
7 would quantify the difference between these AP 42
8 emission factors and part 75 monitoring?

9 MR. MARDER: I have not.

10 MR. MESSINA: Next I call your attention to
11 page 8. If I understand you correctly, you suggest that
12 because part 75 monitoring is not required in the ERMS
13 program, that it similarly should not be required here?

14 MR. MARDER: What I'm saying is that the Agency
15 and the USEPA have determined and approved -- in the
16 case of USEPA have approved programs that do not rely on
17 part 75 monitoring and such programs are of the same
18 type of import as this one arguably, therefore, it is

19 our opinion that this would not be a nonapprovable item
20 before USEPA.

21 MR. MESSINA: It is true, however, that ERMS is a
22 state program, correct?

23 MR. MARDER: State program which becomes part of
24 the State Implementation Plan which has to be approved

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1 by USEPA. My understanding is it is approved, but not
2 officially signed.

3 MR. MESSINA: And the rules before the Board

4 today are part of a regional federal program intending
5 to address ozone transporting in 23 jurisdictions?

6 MR. MARDER: That is correct.

7 MR. MESSINA: I just have one other question then
8 and that is with your proposed language regarding
9 production shifting on page 12 and I was wondering if
10 you have a definition or interpretation of the phrase
11 "previously produced" and if you had anything in mind as
12 what would constitute a product that was previously
13 produced?

14 MR. MARDER: I don't think I could define it. I
15 could tell you what was in our mind when we drafted it
16 and that was it would be inappropriate for someone who
17 was going to generate Subpart X credits to do that by

18 stopping the production of something which would then
19 allow you to reduce the number of emissions. Rather
20 than overcontrolling on the energy side, they would
21 underproduce and then a year from now increase the
22 production of what was previously being produced which
23 that lack of production being the reason by which the X
24 credits were generated would then come back to the

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1 Agency and say we need a new boiler and we're going to
2 produce these widgets.

3 It would be appropriate for the Agency to
4 question whether those widgets were previously produced
5 as distinguished from I'm producing this number of
6 widgets, I have generated Subpart X credits by
7 overcontrolling a unit or shutting down a unit that I
8 won't need and then putting a whole new line in for an
9 additional 3000 though that additional production had
10 not been previously produced.

11 MS. McFAWN: If you do it so it would be shutdown
12 versus overcontrolling, how would that happen in your
13 scenario? You said you could do it either by
14 overcontrolling or by a shutdown.

15 MR. MARDER: Well, there are a number of ways you
16 could do it. From the energy side, I can shut down a

17 boiler and at the same time overcontrol another boiler.

18 MS. McFAWN: So it would be a combination of both
19 things?

20 MR. MARDER: Yeah. Sure, but on the other end, I
21 could terminate production of something such that I do
22 not need as many tons of NOx because I'm no longer
23 producing the item. I could shut down the plant or I
24 could shut down the boiler. One way or another I have

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1 to lower the total NOx emissions.

2 MS. McFAWN: If you go through the shutdown
3 either through the boiler or because you stopped
4 producing that item and then a year later say I want to
5 produce that item again, would that be a previously
6 produced item?

7 MR. MARDER: Yes.

8 MS. McFAWN: Thank you.

9 MR. MESSINA: Thank you. That's all I have, sir.

10 HEARING OFFICER BEAUCHAMP: Other questions for
11 Mr. Marder?

12 MS. McFAWN: I have a couple.

13 At the end of your testimony, you said that
14 you had worked something out with the Agency. Is that
15 the changes the Agency has in its errata sheet to

16 Section 217.815, do you know? That has to do with
17 the NOx trading budget for Subpart X?

18 MR. MARDER: Yes. That is a creation of a new
19 trading allocation pool for Subpart X.

20 MS. McFAWN: I just wanted to tie those two
21 things together. Can I just clarify for the record,
22 concerning your first point which has units eligible
23 under Subpart X, it's the IERG's position that post-1995
24 units should be eligible; is that right?

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1 MR. MARDER: Yes.

2 MS. McFAWN: Units that came in online?

3 MR. MARDER: Yes, after 1995.

4 MS. McFAWN: And the only reason -- you also

5 testified about your first point, that is, the question

6 between permitted versus operating pre-95 was to address

7 one source; is that correct?

8 MR. MARDER: To address an issue that was raised

9 by one source. Their problem clearly is solved if the

10 Board adopts our suggestion.

11 MS. McFAWN: Which is distract the entire --

12 MR. MARDER: Sure. I would parenthetically add

13 something about this whole set of regulations and this

14 whole set of negotiations. The one thing we have found,

15 and I think the Agency would share this, is every time
16 we think we have covered everything, something else
17 comes up that we didn't find.

18 MS. McFAWN: Not surprising with the complexity
19 of this.

20 MR. MARDER: Not surprising at all.

21 MS. McFAWN: On your second point having to do
22 with the calculation of credible NOx emissions, this was
23 discussed in our first hearing and this is what I always
24 call the 80/20 percent split and one of the participants

1 mentioned some other percentage so that there would be
2 some kind of retired emissions, in fact, the numbers
3 used were 90/10.

4 I don't mean to suggest that that participant
5 was recommending that, but do you think that there is
6 anything worthwhile in the Agency's position that some
7 parts of the emission should be retired to satisfy USEPA
8 and make them more inclined to accept this voluntary
9 program?

10 MR. MARDER: The Agency's position appears to be,
11 and there may be more reasons, but the reason that was
12 articulated to us is the part 75 monitoring and that
13 somehow this would convince the Agency that there is

14 a -- there is an inherent error between -- or a spread
15 between part 60 monitoring and part 75 monitoring and
16 this 20 percent is intended to compensate for that to
17 some extent.

18 I've called a couple of our members and said
19 could you quantify the difference between -- as
20 differentiated from the question that Mr. Messina asked
21 me, can you quantify the difference between part 60 and
22 part 75 monitoring and no one really could put their
23 finger on exactly what it is, but nobody thinks it's as
24 high as 20 percent. I think that the Agency's position

1 as regards units that are not shut down, but which
2 modify their operation either through reduced rates or
3 through fuel switching or through overcompliance, those
4 units that will continue to run and that will have to
5 have monitoring for those units, the Agency's position
6 is more defensible in my mind.

7 So a percentage of retirement, if you will,
8 for units that continue to operate is a much more
9 palatable situation for us. I find it very difficult to
10 find a justification for any retirement for units that
11 shut down and while I agree with Mr. Messina that there
12 are differences, the implication that there are

13 differences between a straight emission factor and
14 monitoring, there is no question about that, there are
15 ways around that. The Agency provides in its proposal
16 for how the baseline is going to be established. No one
17 knows exactly what that 1995 or 1997 baseline was
18 exactly and precisely.

19 We are going to have to agree to it. Once
20 you agree to it, that is the number and as I said
21 before, after shutdown, there's no argument about the
22 number, it's zero. So I'm hard-pressed to see a good
23 justification for any reduction for shutdown units. For
24 the other units, I think there's room for discussion.

1 MS. McFAWN: I have some technical questions on
2 how this works. If you continue to operate so you
3 modified it so you have a reduction to be credited, do
4 you then have to monitor that unit using part 75 or can
5 you use an alternative?

6 MR. MARDER: In Subpart X, you can use an
7 alternative. In Subpart U, you have to use part 75.
8 Now, to complicate it a little further, what happens --
9 how is the baseline determined for opt-in units?

10 MS. McFAWN: Under U?

11 MR. MARDER: Under U. The baseline under

12 Subpart U for opt-in units, you have to monitor using
13 part 75 monitoring for a period of time to establish
14 that baseline, two issues, number one is if you are
15 going to have a unit that you are going to shut down,
16 the opt-in provision would require you to install part
17 75 monitoring, monitor for a year and then shutdown.
18 Now, no one is going to do that.

19 MS. McFAWN: Are your emissions that you're going
20 to get in credits, are those based on actual or
21 allowable under Subpart X, do you recall?

22 MR. MARDER: Under Subpart X, they are based on
23 what your baseline is which would be your actual
24 emissions.

1 MS. McFAWN: That's my thought. Okay. Thanks.

2 I'm sorry to interrupt you.

3 MR. MARDER: If I'm wrong, they'll correct me,
4 but I'm pretty sure that's right. The other issue on
5 opt-in is when we talk about part 75 monitoring, part 60
6 monitoring, what are you monitoring? Now, you have the
7 option under the opt-in proposal to establish your
8 baseline by monitoring and you'll use part 75
9 monitoring, but in the real world, if I wanted to
10 establish my baseline, I'm going to run that unit as

11 hard as I can and I'm going to get as many emissions as
12 I possibly can and establish the highest possible
13 baseline because I have the opportunity to do that
14 versus Subpart X where I'm going to have to use
15 something that already occurred.

16 I have no opportunity to go back and raise
17 the baseline. The baseline is what the baseline was.
18 Whether it was what's in 1995 or if it's a post-95 unit
19 and it's allowed by the Board, it would be two out of
20 the three years, but it's past history. I can't raise
21 the baseline just for the sake of getting a larger
22 allocation. It is what it is.

23 So all of those things mashed together and I
24 guess our members come to the conclusion that, well, if

1 I'm going to continue to monitoring the issue of -- if

2 I'm going to continue to monitor a unit, the issue of

3 monitoring and errors in monitoring makes some sense for

4 some sort of a retirement, but for a shutdown unit, it

5 just doesn't seem to make any sense.

6 MS. McFAWN: You mention that you had the

7 opportunity under Subpart U, the opt-in, to basically

8 establish a baseline by demonstrating through full

9 operation a higher baseline, right?

10 MR. MARDER: That is my understanding of how it
11 works.

12 MS. McFAWN: But that would mean you would have
13 to plan ahead like two years hence are going to opt-in?

14 MR. MARDER: Absolutely. You have to plan ahead
15 because you have to establish a baseline.

16 MS. McFAWN: Right, and wouldn't you have that
17 same opportunity in Subpart X?

18 MR. MARDER: Sure you would, but you would have
19 to do it for at least two years.

20 MS. McFAWN: Which you would have to do also
21 under Subpart U, right?

22 MR. MARDER: Yes.

23 MS. KROACK: Isn't it true, Mr. Marder, that

24 under Subpart U for opt-in units, allocations are based

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1 on heat input?

2 MR. MARDER: Yes.

3 MS. KROACK: So then increased utilization of the

4 unit that you didn't really need increased utilization

5 really wouldn't make any sense for -- you might be able

6 to establish your baseline and increased utilization

7 rate, but in the future, you would have to proceed to

8 operate at that advanced rate in terms of receiving an

9 allocation based on that number.

10 MR. MARDER: That is true if it's a Subpart W
11 unit. It's not true if it's a Subpart U unit because
12 the Subpart U units get them for life whereas a
13 Subpart W -- if we're talking about the same thing --
14 whereas Subpart W units roll into that allocation.
15 You're correct in that.

16 MS. KROACK: That's all the questions I have.
17 Thank you.

18 MS. McFAWN: Can we just examine your example
19 number 3 of your testimony?

20 MR. MARDER: Sure.

21 MS. McFAWN: In this example, you propose that a
22 boiler is overcontrolled and the production remains

23 constant, right?

24 MR. MARDER: Example 3, okay. Yes.

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1 MS. McFAWN: I thought you were reviewing it.

2 MR. MARDER: No. No. I was waiting for your

3 question.

4 MS. McFAWN: Business is good and remains

5 constant and decides to build a new facility, maybe I'm

6 asking too many details, but this overcontrol at the

7 boiler initially, were those emissions sent, for

8 example, or given to a Subpart U facility or just held
9 by the company?

10 MR. MARDER: They were used in Subpart U or
11 Subpart W.

12 MS. McFAWN: They were expanded?

13 MR. MARDER: Right.

14 MS. McFAWN: And the fact that you bring up the
15 new boiler will produce 75 tons NOx per season is really
16 not correlated to that reduction?

17 MR. MARDER: Absolutely not. That's what's
18 required for new production.

19 MS. McFAWN: Those were my questions. Thank you.

20 MS. LIU: Mr. Marder, if a facility were required
21 to install part 75 monitoring and had to shut down,

22 would they be able to dismantle that equipment and

23 resell it as used?

24 MR. MARDER: I don't know if I'm qualified to

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1 really answer that. I'm sure there would be some value

2 to the electronics and the removable components. I

3 doubt if you could ever recover the installation costs

4 and the duct work or whatever else was necessary.

5 MS. LIU: Thank you.

6 MS. McFAWN: Could you ask some of your members

7 what that might cost to install and then what they might

8 actually be able to salvage?

9 MR. MARDER: Sure. I'd be willing to do that.

10 MS. McFAWN: Thank you.

11 MR. MELAS: I had just one little question on

12 that production -- the previously produced. Obviously

13 the number of widgets depends on the manner of the

14 market, so let's say that the market has slowed down and

15 the number of widgets produced by this boiler is getting

16 increasingly less, sales staff recommends a relatively

17 minor adjustment in the widget and they put it back on

18 the market and they call it a super widget, is that

19 something that was previously produced or is this

20 something not?

21 MR. MARDER: I think -- that is why this has to
22 be a case-by-case determination. When the Agency sits
23 down with the permittee, they're going to look at this
24 plan that the permittee puts in and one of the questions

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1 they're going to ask is what does the layout of this
2 facility look like, this source? Are all the steam
3 lines interconnected? Could any boiler feed any
4 process? Well, that's one situation.

5 Another situation is, well, we have discrete

6 units where these boilers are totally disconnected and
7 they're going to make initial decisions as to which
8 existing boilers will be covered by the cap and it's
9 going to be based on not only the layout of the
10 facility, but on what the boiler was used for and
11 questions like that would have to be addressed at that
12 point. If there were a black or white answer, I think
13 we would have found it.

14 MR. MELAS: Getting back to the first point,
15 allowing post-1995 units, this was based -- because the
16 original cap was based on what that was in '95. If we
17 just eliminate that and there is an increase in economic
18 activity and all of a sudden there's a lot more units
19 being put out, we'll be pushing through that cap.

20 MR. MARDER: Well, remember the cap is only on --
21 well, the cap is statewide. There's a NOx cap, but the
22 trading cap is a subset of that. The emissions from
23 post-95 units are going to the atmosphere right now.
24 We're not saying let's increase them. We're saying just

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1 move them into another part of the total pie.

2 We're also conceding by this sourcewide cap
3 that you're not going to use them twice, so there is
4 within the whole program room for growth. I mean growth

5 is going to occur and it's going to occur in the
6 nontrading portion of the universe. I mean if it were
7 not, then they would have capped and traded everything
8 which they can't do.

9 MR. MELAS: Thank you.

10 MS. McFAWN: I had one other question. You
11 mentioned that the product shifting regulation is not
12 part of Subpart U.

13 MR. MARDER: It is not part of Subpart U.

14 MS. McFAWN: Do you think it should be there?

15 MR. MARDER: For opt-in units, I think what's --
16 the basic difference, you know -- if you were part of
17 the 99 percent rule, what are we trying to solve here.
18 Opt-in units are going to be primarily units that people

19 intend to continue to operate and for some reason, they
20 want it to be part of the trading budget. There is
21 going to be a benefit for them to opt-in so that they
22 could not only provide emissions to other sources, but
23 they could get emissions to operate. But more than
24 likely, they're going to continue to operate. They're

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1 going to either install part 75 monitoring or they have
2 part 75 monitoring, they're fairly new units, versus
3 Subpart X units where -- I'm not going to say

4 universally because it never happens that way, but in
5 all of our discussions with all of the members in almost
6 every case people intend to shut down those units and so
7 there's a basic distinction on shutting down versus
8 keeping it operating.

9 The unit -- the opt-in unit is going to
10 continue to run and the production shifting really isn't
11 that much of an issue there and I don't see why you
12 would need it nor did USEPA.

13 MS. McFAWN: I was aware of the latter, but thank
14 you.

15 MR. STERNSTEIN: Mr. Marder, I had one question.

16 On page 7 you used the example of units wanting
17 Subpart X credits would possibly withdraw it's permit

18 and simply shut down. Did your members indicate that
19 that would be the primary way that they would receive
20 Subpart X credits or would most of them receive Subpart
21 X credits by simply reducing production?

22 MR. MARDER: The majority of our members, in
23 fact, all of our members who actually are saying that
24 I'm going to use this were planning shutdowns and in

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1 almost all cases, it was a situation where they are
2 going to build a new Subpart U unit and the only way

3 they could do that -- because they come in with zero.

4 The only way they could do that is by shutting down

5 existing older units, more polluting units, on their own

6 site. That is the typical way Subpart X units are going

7 to be used.

8 MR. STERNSTEIN: Can I throw that same question

9 to the Agency and ask them if that was the -- if that

10 was the same story that they got from the regulating

11 community all over Illinois?

12 MS. KROACK: When we were negotiating this

13 proposal with Mr. Marder on behalf of his members and

14 others who attended the meetings, we weren't clear as to

15 what Subpart X was used for. We wanted to provide as

16 much flexibility as we could and possibly approvable by

17 USEPA, so we covered, in addition to shutdowns,
18 application of control technology and taking permit
19 limits to reduce production rates or NOx rates out of
20 the stacks if at all possible so we allowed for all
21 eventualities. Mr. Marder did indicate that he thought
22 it would be used primarily for shutdown units and the
23 indication was probably more likely to be Subpart U type
24 sources than the electrical generating unit pure

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1 utilities, so we thought -- we knew that that was out

2 there.

3 THE WITNESS: If I could add -- I want to make it
4 very clear we support the use of Subpart X for all of
5 the three situations that are included in the regulation
6 and the basic reason for that is, as I said, before
7 every time we think we thought of everything, something
8 else comes along, so we don't know what's going to
9 happen.

10 And the way the negotiations went, we had
11 many meetings with our members alone on allocation, on
12 use of Subpart X and then we met with the Agency either
13 alone or with our members to convey their issues, so I
14 don't think Laurel and the rest of the Agency would have
15 heard those stories directly. It basically came through

16 us.

17 HEARING OFFICER BEAUCHAMP: Are there any other

18 questions for Mr. Marder today? Thank you very much,

19 Mr. Marder.

20 MR. MARDER: Thank you.

21 HEARING OFFICER BEAUCHAMP: Mr. Wachtel is here.

22 After we swear you in, if you'd like to present a motion

23 to have your written testimony entered into the record?

24 MR. WACHTEL: Okay.

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1 (Witness duly sworn.)

2 MR. WACHTEL: Good morning. My name is Lyle
3 Wachtel. I'm director for the University Office for
4 Planning and Budgeting at the University of Illinois. I
5 have prepared some pretestimony that I move that be
6 admitted into the record of this proceeding.

7 HEARING OFFICER BEAUCHAMP: Mr. Wachtel has moved
8 that his testimony be admitted. Do we have any
9 objections? Seeing none, we will mark this as Exhibit 5
10 and enter it into the record.

11 MR. WACHTEL: I know the proceedings you have
12 here is with respect to the NOx issues is very
13 encompassing, and we're trying to capture a lot of
14 processes within the state of Illinois and as the base

15 rules have been written, what has happened in the case
16 for the University is is that you've captured one of the
17 nuances within the existing systems. And I'm here to
18 answer questions based on my testimony and I'm also here
19 to ask for some guidance or some help in terms of relief
20 in the regulations to help us from an economic
21 standpoint address this particular boiler situation that
22 we have at the Urbana campus.

23 As I've indicated in my testimony, we have
24 several boilers for the Urbana campus and when you

1 selected the limit of 250 MMBtu as a limit, you actually
2 captured one of our boilers in terms of the emission
3 inventories and as such are requiring based on the
4 current write-up of the rules an installation of the
5 continuous emission monitoring system. While I
6 understand the reasons, you have to draw the line
7 somewhere. In this particular case, we are so close to
8 that line that the installation of a continuous
9 monitoring for one boiler is very, very costly to the
10 University and ultimately the state.

11 The value of what we're trying to monitor in
12 this particular application is in -- I think in the
13 overall sense very, very small for what we're -- what

14 you're trying to accomplish and as you can see from the
15 numbers that we've listed here, with the 250 as the
16 line, the boiler is only rated at 265 and that in the
17 sense is almost in the rounding area for the emission
18 side and one of the things that we see as being a useful
19 alternative for this type of a boiler installation would
20 be the use of monitoring of fuel use for the ozone
21 period that we're talking about and given the size of
22 the boiler and those type of activities, that would be
23 one alternative that we would like you to seriously
24 consider in the rulemaking process.

1 The other alternative that we have considered
2 internally is is that we could derate the boiler roughly
3 5 or 6 percent, whatever it takes to get below the 250
4 so that you don't have to remove your standards, but at
5 least that would give us an option then for you to -- so
6 that we could remove the obligation of continuous
7 emissions monitoring for this boiler, so those are
8 the -- in terms of the context of the existing program,
9 those are really the criteria that I was trying to bring
10 forward before the Board and for their consideration in
11 this process.

12 HEARING OFFICER BEAUCHAMP: Thank you,

13 Mr. Wachtel. We'll open the floor to questions for

14 Mr. Wachtel.

15 MR. MESSINA: I just had a couple questions.

16 MR. WACHTEL: Sure.

17 MR. MESSINA: First of all, what is the rate of
18 heat input capacity of Boiler 7 at this time currently?

19 MR. WACHTEL: The name plate rating is 265 MMBtu.

20 MR. MESSINA: And then what would the practical
21 heat input capacity be of boiler number 7?

22 MR. WACHTEL: Practically right now, it's
23 probably 185. That's in pounds of steam out. It would
24 be 240. I have to do with the math if you want to bear

1 with me here.

2 MR. MESSINA: If that is indeed the case then,
3 why hasn't the rate input capacity of Boiler 7 been
4 reduced to reflect its practical capacity?

5 MR. WACHTEL: It becomes a matter of function. I
6 mean if we're operating a boiler, and it can only do so
7 much, to go back and go through the paperwork, quite
8 frankly, of doing that is a burden that we to this point
9 have never seen the reason to do. Now, we have a reason
10 to do that and I would submit that that would be
11 something that we would be willing to do in this

12 instance.

13 MR. MESSINA: Would you have any idea how long it
14 would take to process that paperwork?

15 MR. WACHTEL: Not offhand, but I could certainly
16 get that information for you.

17 MR. MESSINA: No idea though roughly?

18 MR. WACHTEL: It depends on what --

19 MR. MESSINA: Months, years?

20 MR. WACHTEL: No. It would be less than a year.

21 MR. MESSINA: Thank you. That's all.

22 HEARING OFFICER BEAUCHAMP: Thank you,

23 Mr. Messina.

24 MS. LIU: To rerate the boilers, all that

1 involves is just the paperwork or do you need to do
2 something mechanical as well?

3 MR. WACHTEL: Well, the actual -- you talk about
4 the effective input heating of the boiler. The boiler
5 is over 20 years old and this particular boiler started
6 out as a coal boiler and then it was converted to oil
7 and gas at one point and in the late '80s, it was
8 reconverted to coal again and at the time we reconverted
9 it to coal, we installed a scrubber for the facility.

10 This particular boiler, it does have some age

11 on it and there are a few tubes in the actual boiler
12 itself that have been plugged over time because of the
13 maintenance issues and so that, in effect, has limited
14 the output of the boiler. Although the official name
15 plate on the boiler has never changed, the effective
16 output has and to the extent that we would want to
17 rerate the boiler, we could certainly test that from a
18 heat output basis and we could put a new name plate on
19 it based on the existing configuration and that would
20 then, in effect, be the basis for whatever paperwork we
21 would then submit in the process, and that would be --
22 that would be one solution to this particular problem,
23 but to go through and change a name plate on the boiler,
24 from a manufacturer's standpoint, can be a big deal, but

1 it's something that -- you know, given an option of
2 doing that versus putting a continuous emission
3 monitoring system, I would choose the former rather than
4 the latter.

5 MS. LIU: Is there a great deal of cost in doing
6 that?

7 MR. WACHTEL: To do the one-time test on the
8 rerating?

9 MS. LIU: Yes.

10 MR. WACHTEL: No. There wouldn't be a
11 significant cost because right now because of the
12 season, we could actually -- we could go through one of
13 our normal maintenance periods where we would clean the
14 boiler up because of the coal use and get it in our best
15 operating scenario and then we could go ahead and run it
16 up as high as we could and then get it certified based
17 on that level or we could -- at least if you wanted a
18 number to just get below the 250, we would take that
19 number and make that our official limit if you wanted
20 to. I mean that's still an option.

21 MS. LIU: Thank you.

22 MS. KROACK: I just have a couple questions. You
23 stated just a minute ago that you actually made some

24 modifications to the tubing in that boiler.

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1 MR. WACHTEL: We just -- if we have a tube leak,
2 we would just either repair that actual tube or seal
3 that tube off if we can, so it's not really a
4 modification.

5 MS. KROACK: So your understanding is you haven't
6 made any modifications?

7 MR. WACHTEL: No. No. I'm sorry. I guess that
8 would be a wrong word in this case. There has been no

9 modifications to boiler. There has been a specific
10 instance where we had a tube leak and depending on where
11 that actual leak is, it may be more economical to go
12 ahead and block that tube off completely or go ahead and
13 weld a patch onto that particular tube.

14 MS. KROACK: You recognize that certain process
15 modifications can, in effect, increase the capacity?

16 MR. WACHTEL: Yes. I do understand that and this
17 was not a case for that. Thank you for correcting me.

18 MS. McFAWN: I have a few questions. I'm not
19 quite sure where your boiler fits in the scheme. The
20 record reflects that it fits in under Subpart X; is that
21 correct? Which set of the regulations are you concerned
22 about?

23 MR. WACHTEL: I believe it's Subpart U.

24 MS. McFAWN: So which means that you would be

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1 listed on Appendix E.

2 MR. WACHTEL: Well, this is a coal boiler and my

3 understand of Appendix E is that's only on oil and gas.

4 MS. McFAWN: I'm looking at Appendix E and I see

5 there's coal fired ones and gas fired ones, but I don't

6 see your boiler listed. Am I missing something?

7 MR. WACHTEL: I'm at the Abbott Power Plant.

8 MS. McFAWN: I must be missing the page. I

9 apologize.

10 MR. WACHTEL: That's quite all right.

11 HEARING OFFICER BEAUCHAMP: Are there any other

12 questions for Mr. Wachtel? Thank you very much.

13 HEARING OFFICER BEAUCHAMP: Could we go off the

14 record for a moment?

15 (Discussion had off the record.)

16 HEARING OFFICER BEAUCHAMP: We're going to

17 continue with testimony being presented by concerned

18 parties. We've got Richard Zavoda. Did I say that

19 right?

20 MR. ZAVODA: Correct.

21 HEARING OFFICER BEAUCHAMP: Swear him in please.

22 (Witness duly sworn.)

23 MR. RIESER: My name is David Rieser. I'm with
24 the law firm of Ross & Hardies. I'm here on behalf of

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1 LTV Steel Company. This testimony, as Mr. Zavoda will
2 discuss, came out of a very recent discovery regarding
3 the lack of inclusion of LTV Steel on the Appendix E and
4 so we were not able to refile the testimony.

5 I have copies of the testimony that Mr.
6 Zavoda is going to give today which he will read from

7 and read into the record, but I would like to have the
8 testimony itself admitted as an exhibit. I think it
9 would be Exhibit 6 to this proceeding and I have copies
10 for other people who are here.

11 HEARING OFFICER BEAUCHAMP: Would you like to do
12 that now or at the conclusion?

13 MR. RIESER: Either way. Why don't we do it now?

14 HEARING OFFICER BEAUCHAMP: Why don't we mark it
15 then as Exhibit 6 and we will admit it into the record.

16 MR. RIESER: Thank you very.

17 HEARING OFFICER BEAUCHAMP: When you're ready,
18 Mr. Zavoda.

19 MR. ZAVODA: Good morning. My name is Richard M.
20 Zavoda. I'm the corporate environmental control manager

21 of air quality for LTV Steel Company, Inc. LTV's
22 corporate offices are located in Cleveland, Ohio. LTV
23 Steel is an integrated steel manufacturer that produces
24 more than 8 million tons of steel per year. LTV Steel

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1 manufactures coke at a facility in Chicago located at
2 11600 South Burley Avenue. My responsibilities include
3 assisting LTV Steel's Chicago Coke Plant to fulfill
4 their obligations to comply with applicable air
5 regulations.

6 LTV Steel employs approximately 250 employees
7 at the Chicago Coke Plant. The Chicago Coke Plant
8 produces more than 600,000 tons of coke per year. Coke
9 is an essential raw material for the integrated
10 steelmaking process. The coke produced at the Chicago
11 Coke Plant is used in LTV Steel's Indiana Harbor Works
12 Steel Plant that employs approximately 3500 people, many
13 of whom live in Illinois. LTV Steel or its predecessor
14 has produced coke at the Chicago Coke Plant for mor than
15 50 years.

16 I am testifying today because one of LTV's
17 boilers at the Chicago Coke Plant was inadvertently not
18 included in Appendix E of Subpart U and thus not granted
19 allocations that were provided to other similar

20 industrial boilers. LTV Steel Requests that Appendix E
21 be revised to include appropriate NOx allocations to
22 correct this mistake and to allow the continued
23 operation of Boiler 4B without placing LTV Steel at a
24 competitive disadvantage.

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1 The Chicago Coke Plant has utilized Boiler 4B
2 to produce steam for the last 27 years. Boiler 4B was
3 commissioned in approximately 1973 and combusts both
4 coke oven gas and natural gas. The rated capacity of

5 Boiler 4B as listed in the facility's Title V permit is
6 368 million Btu per hour. Boiler 4B is rated to produce
7 250,000 pounds per hour of steam. LTV Steel continues
8 to operate Boiler 4B and pays annual air emission fees
9 for the facility including Boiler 4B.

10 LTV's Title V permit limits the NOx emissions
11 of Boiler 4B to 0.2 pounds per million Btu. The Chicago
12 Coke Plant's Title V permit, ID number 031600 AMC, was
13 issued on June 15th of the year 2000. The NOx
14 limitation of 0.20 pounds per million Btu is based on
15 the applicability of 40 CFR Part 60.44, Subpart D,
16 standards of performance for fossil-fuel-fired steam
17 generators for which construction is commenced after
18 August 17th, 1971. These New Source Performance

19 Standards are applicable to each fossil-fueled steam
20 generator that has a heat input rate of more than 250
21 million Btu per hour.

22 The Title V permit application was submitted
23 in correspondence dated March 1st, 1996, and included
24 Boiler 4B and its rated capacity of 368 million Btu per

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1 hour. The Title V permit supersedes previously permits
2 issued by Illinois EPA for Boiler 4B which includes
3 those issued on May 11, 1987; March 26th, 1990, and

4 January 17th, 1995.

5 The NOx rulemaking proposed by Illinois EPA
6 in the Illinois Pollution Control Board's docket R01-17
7 is applicable to fossil-fueled-fired boilers greater
8 than 250 million Btu per hour that are also
9 nonelectrical generating units such as LTV's Boiler 4B.

10 The NOx allocations for existing fossil-fuel-fired
11 boilers greater than 250 Btus per hour listed in
12 Appendix E of the proposed rule do not include any NOx
13 allocations for LTV Steel's Boiler 4B even though it is
14 not different from any of the other boilers in the
15 Appendix. In the absence of adequate NOx allocations
16 starting with the NOx control period in the year 2004,
17 LTV Steel would have to permanently shut down Boiler 4B

18 or rely on purchasing NOx allocations. Either of these
19 options are unacceptable and would be a competitive
20 disadvantage to LTV Steel.

21 LTV Steel believes that Subpart U of the
22 proposed rule applies to Boiler 4B based upon available
23 information. LTV Steel requests that Appendix E be
24 revised to include a specific NOx budget allocation of

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1 135 tons of NOx per control period for Boiler 4B. This
2 value is based 368 million Btus per hour and 0.2 pounds

3 of NOx per million Btu during the entire ozone season.
4 0.20 pounds NOx/MMBtu times 368 MMBtu/hour times 24
5 hours per day times 153 days per ozone season times a
6 ton divided by 2000 pounds equals 135 tons of NOx per
7 ozone season. Since the Illinois EPA has not yet
8 received this allocation from the USEPA, we suggest that
9 a footnote be added to indicate that this particular
10 allocation is subject to USEPA approval.

11 LTV Steel has recently brought this issue of
12 Boiler 4B being omitted from Appendix E to the attention
13 of Illinois EPA. We are pursuing an explanation of why
14 Boiler 4B was not granted any NOx allocations even
15 though the permit history of this source indicates that
16 Illinois EPA was aware of its existence and capacity.

17 Based on preliminary information, LTV Steel
18 believes the Illinois EPA inadvertently omitted Boiler
19 4B from Appendix E. LTV Steel plans to continue
20 discussions with Illinois EPA to pursue the inclusion of
21 appropriate NOx allocation for Boiler 4B in a revision
22 of this rule. LTV Steel appreciates the opportunity to
23 provide this testimony and asks for your support of this
24 request.

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1 HEARING OFFICER BEAUCHAMP: Mr. Zavoda, do you

2 have any other additional comments beyond your
3 testimony?

4 MR. ZAVODA: No, I don't.

5 HEARING OFFICER BEAUCHAMP: And we'll take
6 questions for Mr. Zavoda.

7 MR. MESSINA: I just have three. First, are you
8 aware that the NOx baseline emissions are determined as
9 described by USEPA based on actual 1995 NOx emissions?

10 MR. ZAVODA: I understand that that has been the
11 case in other states.

12 MR. MESSINA: If you could, please tell me what
13 were the actual 1995 NOx emissions from this boiler as
14 reported in your annual emission report submitted to the
15 agency during the ozone period?

16 MR. ZAVODA: I don't have that information with
17 me, but we certainly can supply it.

18 MR. MESSINA: And, finally, are you aware that to
19 compute base emissions for NOx allocations, USEPA
20 regulations require reducing units of 1995 uncontrolled
21 emissions by 60 percent and then going out to 2007?

22 MR. ZAVODA: I did not see that language in the
23 rule, so I'm not aware of it.

24 MR. MESSINA: That's all we have.

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1 HEARING OFFICER BEAUCHAMP: Other questions?

2 MS. McFAWN: I have some questions of the Agency.

3 Should I hold those until later? Are you going to be in

4 the hearing room a little later?

5 MR. ZAVODA: Yes.

6 MS. McFAWN: Thank you, Mr. Zavoda.

7 HEARING OFFICER BEAUCHAMP: At this time, we'd

8 asked the Agency if you have any testimony you'd like to

9 present.

10 MR. MESSINA: Just two. First of all, it's my

11 understanding the first hearing the Agency committed to

12 submitting an updated analysis --

13 MR. MELAS: Could you speak up, please?

14 MS. McFAWN: Why don't you come up and sit by the

15 court reporter?

16 MR. MESSINA: I believe at the first hearing, the
17 Agency committed to submitting an updated analysis of
18 economic and budgetary effects and so I do have one here
19 to reflect the testimony given at the first hearing and
20 I would ask that this be entered into the record as
21 Exhibit 7.

22 HEARING OFFICER BEAUCHAMP: Are there any
23 objections to admitting this as Exhibit 7 into the
24 record? Seeing none, we'll mark that as Exhibit 7.

1 MR. MESSINA: And, secondly, on December 15th,
2 the Agency sent to the Board an errata sheet and motion
3 to amend and we would ask that that be entered into the
4 record as Exhibit 8 and in addition to that, we would
5 also -- Ms. Kroack would like to go through some of the
6 points contained in the errata sheet motion to amend.

7 HEARING OFFICER BEAUCHAMP: We will mark that as
8 Exhibit 8 unless there are objections. Seeing none,
9 we'll mark that as Exhibit 8 and attach that to the
10 record.

11 (Witness duly sworn.)

12 MS. KROACK: We submitted an errata sheet motion
13 to amend on December 15th and actually served the

14 attached service list. We apologize that we don't have
15 additional copies with us presently. I do not intend to
16 go through all of the nonsubstantive minor wording
17 changes that we proposed. This is a rather lengthy
18 document, but the Board has asked that I go briefly
19 through the major changes that we included in here or
20 the ones of any significance.

21 The first change that we're proposing is the
22 definition of source that appears in Section 211.6130.
23 We had proposed initially two alternative -- we already
24 had an existing definition of source. We proposed an

1 alternative for purposes of Part 217. Following that
2 proposal, internal discussions raised the concern of how
3 to interpret which definition of source applied under
4 which circumstance and, in fact, the Agency had been
5 applying the definition of source the way it currently
6 appears in the Illinois Environmental Protection Act in
7 Section 39.5, so we felt it was appropriate to have one
8 definition of source and revised it to reflect the
9 Environmental Protection Act.

10 We informed the Illinois Environmental
11 Regulatory Group of this -- of our intent. They
12 indicated they generally supported it, and we came

13 forward with the definition of source. Following that,
14 the submission of our errata, Mr. Peterson from ERG
15 pointed out that there were some minor nonsubstantive
16 differences from what were included in this errata and
17 what is actually in 39.5 and we've agreed to make those
18 corrections at a future date prior to the close of this
19 rulemaking obviously. So that was the first change.

20 The next change appears in Section
21 217.654(a)(1) and this would be Subpart U. We've added
22 some language to indicate that an Appendix E unit
23 remains an Appendix E unit regardless if there's a
24 change in ownership or name designation. Those changes

1 don't occur frequently, but they do occur and we wanted
2 to make it clear that those units remained an Appendix E
3 unit and remained entitled to the allocation methodology
4 provided under Subpart U.

5 At the request of Board Member McFawn, and we
6 agreed that it was prudent, we moved the substantive
7 provisions that are applicable to units electing low
8 emitter status from the applicability section into a
9 reserve section that we included at first notice, and
10 this appears at Section 217.672, so that language was
11 stricken in 654 and merely moved to a new section with a

12 new title. We made a change in Section 217.654(d) at
13 the request of ERG. I take that back. I misspoke. We
14 made a change to this section basically to make it clear
15 what we meant by not receiving an allocation other than
16 through Subpart U if you were a Subpart U type unit and
17 this was a wording change not intended to change the
18 intent, but to make it clear.

19 The next change was the one we made on behalf
20 of ERG in Section 217.656(b)(3) and they pointed out to
21 us that while they have an obligation to submit a permit
22 application, it's within the Agency's control over when
23 that permit is issued, so we made a change making the
24 requirement for them to submit a complete application

1 rather than obtaining a permit.

2 We made a change -- several changes in

3 Section 217.660. In "A" we struck language referring to

4 allowances obtained pursuant to Subpart X because we

5 made changes within the text of Subpart X to set up at

6 least for the purposes of how the state will apportion

7 allowances by creating a separate Subpart X budget.

8 This eliminated the concerns that we were having with

9 the distribution of our pull of allowances and how that

10 could be interpreted versus the language in X, Subpart W

11 and Subpart U and so we had to strike the language in
12 Subpart U and we've addressed that later in Subpart X
13 and I'll get to that in a moment.

14 We also realized and it was pointed out to us
15 both by the Board and by the industry, so all three of
16 us came to the conclusion that we had two provisions for
17 low emitters when actually one of them should have been
18 for opt-in units under Section 217.660, so we made
19 changes to Subpart B -- excuse me -- Subsection B to
20 change that from low emitters to opt-in units and then
21 we deleted Subsection C which again referred to Subpart
22 X allowances and allocations because that's addressed
23 later in the revisions to Subpart X.

24 In Section 217.662(b), we had not only a

1 typo, but we failed to properly describe the amount of
2 the new source set aside. The changes in that
3 subsection indicate that the new source set aside is the
4 difference between columns 4 and 5 in Appendix E. We
5 made various changes in Section 217.668 in
6 Subsections F, G, H and I merely to make the language
7 clearer, although they look by the number of strike-outs
8 and underlinings to denote additions that they're
9 substantive. In fact, they were really just to make the

10 provisions clear. Some of the language in here was
11 duplicative.

12 Again, in Section 217.672 is where we moved
13 the requirements for low emitting units and we've moved
14 those from Section 217.654.

15 MS. McFAWN: Before we move away from this
16 section, would it be easy for you to tell us what minor
17 modifications were made to this new 217.672? I know it
18 was relocated, but then you also said it was
19 further modified.

20 MS. KROACK: No. The only modification in
21 217.672 from the language is, I think, the lead-in
22 paragraph slightly because we left the provision about
23 they are subject to the rule if they -- unless they

24 elect low emitter status and then requirements of how

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1 you go through low emitter status were just moved, so we

2 had to change the lead-in sentence just a little bit.

3 Other than that, there were no substantive changes in

4 this section.

5 MS. McFAWN: Thank you.

6 MS. KROACK: In Section 217.805, we deleted

7 language -- in Subsection G, we deleted language that a

8 unit could not both -- a Subpart X unit could not both

9 create allowances for purposes of the NOx trading
10 program and also use those allowances for new source
11 review purposes. As we indicated in our testimony at
12 the first hearing, following further review, we realized
13 that USEPA indicated that that might be acceptable and,
14 in fact, would be looking at that issue further and
15 issuing guidance on it. Based on those statements and
16 the SIP Call, we felt it was appropriate to delete this
17 language and allow them to be used for dual purposes
18 unless and until USEPA speaks to the contrary.

19 In addition, we added language eliminating
20 internal combustion engines that will be subject to the
21 NOx SIP Call Rule from being able to create allowances
22 under Subpart X. As the Board and members of the

23 audience I believe are aware, the Court of Appeals for
24 the District of Columbia Circuit remanded that portion

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1 of the NOx SIP Call dealing with internal combustion
2 engines and directed USEPA to take further action.
3 USEPA is in the process of completing that remand order
4 and reissuing that portion of the SIP Call, but it has
5 not been completed yet and since those units will be
6 subject to the rule like units under Subparts T, U, W
7 and V, they should not also be allowed to participate

8 under Subpart X, so that was that clarification.

9 We made a number of changes under Subpart X
10 to Section 217.815, and that is where we make a number
11 of changes setting up a segregal portion of the total
12 allowances that we will be receiving from USEPA under
13 the NOx trading program for Subpart X, and we will use
14 that portion of the budget to make allocations under
15 Subpart X for reductions that we recognize and for which
16 USEPA creates allowances. This language -- there is an
17 A that helps to clarify that and we added Subsections B,
18 C and D to that section to address those issues.

19 In Section 217.840(b)(2), we modified that
20 subsection actually (b)(2)(b) to provide for when there
21 is a withdrawal of an applicable permit for which a

22 Subpart X reduction has been recognized for a shutdown
23 unit, we would provide USEPA with a copy of that
24 proposal and our notice of intent to approve that

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1 reduction plan and withdraw the proposal and if USEPA
2 does not disapprove that, we would go forward with our
3 procedural requirements under Subpart X for issuing --
4 either issuing that fee stop or indicating that the
5 shutdown has occurred.

6 Section 217.840(c) was also modified to

7 indicate that once we've gone through our procedural
8 mechanisms at the state for recognizing that Subpart X
9 reductions have occurred, we would submit an allocation
10 to USEPA for that portion and request of them that they
11 create allowances in the Subpart X trading budget, and I
12 believe the rest of the changes are essentially
13 nonsubstantive. They're for clarification. They're
14 typographical errors. They're formatting in some case
15 corrections and I'm not sure that they need any further
16 discussion today, but I'm happy to take any questions
17 and if anyone would like to look at my copy, they can do
18 so.

19 HEARING OFFICER BEAUCHAMP: Thank you Ms. Kroack.

20 Do we have any questions for the Agency? Mr. Marder?

21 MR. MARDER: I just have two quick questions.

22 Your change on page 24 where you are modifying

23 217.805(g) to add a reference to stationary internal

24 combustion engines, I believe you stated that that was

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1 because these type of units will, if USEPA takes final

2 action, be included under the NOx SIP Call; is that

3 correct?

4 MS. KROACK: Correct.

5 MR. MARDER: Would the Agency be opposed to an

6 addition to that language that would qualify that
7 Subsection G would trigger upon USEPA taking final
8 action?

9 MS. KROACK: The concern for that, Mr. Marder, is
10 that we could get -- once this rule is submitted, we
11 could get an application for a Subpart X proposal and
12 yet while that rulemaking USEPA would add that they're
13 proposed, it could be subject to further challenge and
14 we won't know the status of it necessarily by the time
15 we get that X proposal and those units, under the way
16 the trading program is intended to work, cannot really
17 create allowances under Subpart X and then also, in
18 essence, double count those reductions under our cap.
19 So at this point -- and we can talk about it further,

20 but at this point, I would say no and, however, if USEPA
21 at some point were to elect not to go forward with that
22 portion, we would agree to delete this language, but
23 really we have been told that that rulemaking remand is
24 at OMB and it's forthcoming.

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1 MR. MARDER: Okay. The other question deals with
2 your modification to 217(c)654(a)(2)(d) which is, we
3 agree, a clarification. I just want to clarify the
4 clarification. As this is written, would I be correct

5 that a source that is not covered under Subpart U or W,
6 a source that has no units covered by either of those
7 parts, now constructs a new unit which would be covered
8 by definition under Subpart W could elect to make that a
9 Subpart U unit?

10 MS. KROACK: That is correct.

11 MR. MARDER: Thank you. That's all the questions
12 I have.

13 HEARING OFFICER BEAUCHAMP: We just got copies of
14 the errata sheets, so we'll pass them out.

15 MR. GRIFFITHS: The intent to exempt IC engines
16 that would be normally in the program therefore are
17 under the IC engines --

18 HEARING OFFICER BEAUCHAMP: We need you to speak

19 a little bit louder. We're having a hard time hearing
20 you over the fans. Maybe stand up so you carry a little
21 bit.

22 MR. GRIFFITHS: I haven't read 805 yet, but the
23 intent is to exempt all IC engines from opting in under
24 Subpart X or just those that would be caught under the

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1 NOx SIP Call?

2 MS. KROACK: Just those that would be caught
3 under the NOx SIP Call.

4 MR. GRIFFITHS: The one ton a day?

5 MS. KROACK: By the one ton a day emission.

6 HEARING OFFICER BEAUCHAMP: Thank you

7 Mr. Griffiths. Any other questions regarding Ms.

8 Kroack's testimony and the errata sheet?

9 MS. McFAWN: I had a question.

10 MS. KROACK: Sure.

11 MS. McFAWN: Could you explain to me more about

12 how the new budget for Subpart X was created?

13 MS. KROACK: In negotiations with units who are

14 interested in using Subpart X through ERG, IERG as

15 they've also been referred to today, we agreed that --

16 we do firmly believe that Subpart X is a workable

17 proposal and a good plan and something that ultimately

18 should receive USEPA approval.

19 Again, it is not permitted by the technical
20 terms of the NOx SIP Call, however, that doesn't mean it
21 isn't both prudent and reasonable. We agreed that it is
22 prudent and reasonable and we're agreeing to take it to
23 USEPA and push very strongly for its approval as a SIP
24 revision. On the other hand, because USEPA is the

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1 entity which creates allowances under the trading
2 program and then gives them to the state to allocate as

3 we see fit, to the extent that allowances aren't
4 created, we won't have anything to give unless those
5 allowances came from other portions of our budget that
6 we had already agreed to allocate elsewhere under
7 Subparts W and U.

8 In an effort to avoid that, but at the same
9 time not give USEPA an easy way to say I'm failing to
10 create these allowances and we're going to ignore your
11 request, we came up with a series of language changes
12 that indicate a Subpart X budget will be created and
13 USEPA shall make a -- shall create allowances for these
14 reductions assuming that the procedural process has been
15 properly followed and it's our intent to take this to
16 USEPA and submit it as a SIP revision and, you know,

17 hopefully negotiate its acceptance, so that that kind of
18 addressed both of those questions, but in that period of
19 uncertainty or to the extent USEPA never approves this,
20 but we elect to force the issue and go forward with one
21 of these, we've protected the idea of the allocations
22 under Subparts W and U.

23 MS. McFAWN: By protected you mean they will
24 remain in -- assigned to Subpart W and Subpart U?

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1 MS. KROACK: Right.

2 MS. McFAWN: So these allocations, these
3 allowances will be created as people use Subpart X?

4 MS. KROACK: As they come forward with the
5 proposal and they've gone through the procedural process
6 and then we submit the allocation to USEPA.

7 MS. McFAWN: So we don't have a number now?

8 MS. KROACK: We do not have a number now.

9 MS. McFAWN: It would be a fluid number based on
10 applications?

11 MS. KROACK: It would be a fluid number based on
12 applications and review of those applications.

13 MS. McFAWN: In the errata sheet is proposed
14 Subpart 2 -- or Sections 217.800 to be deleted?

15 MS. KROACK: Correct.

16 MS. McFAWN: Could you explain that a little bit?

17 I think that fits into what we were discussing.

18 MS. KROACK: It does. Let me find it here for a
19 moment. I'm trying to find the language and it doesn't
20 appear there. I'll have it in a moment. The reason we
21 delete this last sentence is in later parts of the
22 proposal we already talk about verifiable, quantifiable
23 and federally enforceable, but that sentence went on to
24 say for which allowances are allocated will be

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1 transferred and, again, this appeared in the -- this
2 appeared to industry groups to create an out for USEPA
3 and they were concerned that USEPA would look at this
4 language as an ability to not create allowances and,
5 therefore, not effectuate Subpart X, and we agreed that
6 that certainly could be interpreted that way and agreed
7 that its deletion was probably appropriate.

8 MS. McFAWN: I know I asked this under Subpart U
9 and you provided it and that was to elaborate more on
10 the purpose of Subpart U. Do you think it would be
11 beneficial to elaborate on the purpose of Subpart X
12 beyond the remaining single sentence to somehow
13 reference that there is a separate budget here for this
14 part that is created through whichever the applicable

15 sections?

16 MS. KROACK: We could look at that. I believe
17 we've got language that does that later, but if you feel
18 it's appropriate to also include it here, we could
19 certainly look at it and speak with representatives of
20 industry to see if they agree. Right now I can't think
21 of an objection.

22 MS. McFAWN: I'm asking you because I don't have
23 proposed language in mind. It's something I would like
24 you to consider. You did a very nice job.

1 MS. KROACK: It needed a little clean-up, but
2 thank you. Board Member McFawn, I would sort of direct
3 you to 217.815 proposed Subsection B, it appears on 26
4 of the errata. This language I believe could also
5 probably appear in Section 800 since it appears here and
6 it might be helpful to have it in both sections, but,
7 again, I would want to talk to industry groups and make
8 sure that they were comfortable with that as well.

9 MS. McFAWN: It was Section 217.815(b)?

10 MS. KROACK: Yes. It appears on page 26 of the
11 errata. It's the underscored language at the top of the
12 page.

13 MS. McFAWN: Thank you.

14 HEARING OFFICER BEAUCHAMP: Are there any other
15 questions for Ms. Kroack on the errata sheet?

16 MR. STERNSTEIN: Ms. Kroack one quick question as
17 a follow-up to what Board Member McFawn was asking, you
18 had indicated that a member of the regulated community
19 would come forward with a Subpart X proposal for
20 Subpart X credits and that USEPA would have to approve
21 those credits. Would USEPA have to approve every single
22 application that came before Illinois EPA?

23 MS. KROACK: We give them the opportunity to
24 review and comment and we submit it to them either by

1 submitting the reduction proposal directly or by doing
2 it through our federally enforceable state operating
3 permit program, but, yes, that's what Subpart X
4 provides, so that USEPA could individually review each
5 of these proposals and either accept or reject them or
6 point out areas where they might have concern, but we
7 give them the opportunity to participate in that
8 process.

9 MR. STERNSTEIN: Does Illinois EPA have any idea
10 what kind of time frame that would add on to the
11 application process as far as USEPA review of each of
12 these applications?

13 MS. KROACK: Our process for issuing permits is
14 already established so that unless USEPA indicated an
15 objection, we would follow the time frames provided for
16 in the Environmental Protection Act.

17 HEARING OFFICER BEAUCHAMP: Any other questions?
18 Let's go off the record for about five minutes.

19 (Recess taken.)

20 HEARING OFFICER BEAUCHAMP: Board Member McFawn
21 has some additional questions of Ms. Kroack.

22 MS. McFAWN: Some of these are very minor points.
23 If I just run them by you, I could find out if you might
24 misstep or you might even have a better idea, you're so

1 conversant on these rules. At Section 217.656
2 compliance requirements, you have several subparagraphs
3 and the thing that surprises me is the title of
4 Subparagraph D is NOx Requirements and I just wondered
5 if the Agency could look at that and see if there's not
6 maybe a better title. This seems to have something to
7 do with an accounting date, that type of thing.

8 MS. KROACK: You're referring to Section 217.656?

9 MS. McFAWN: That's correct.

10 MS. KROACK: We currently title it Compliance

11 Requirements.

12 MS. McFAWN: That's the name of the section, yes,
13 but the subparagraphs -- all the subparagraphs there
14 have separate subtitles and the one NOx Requirements is
15 something that is rather nondescriptive.

16 MS. KROACK: Okay. We'll look at that.

17 MS. McFAWN: Under that subparagraph, there is
18 another subparagraph, number 7, which begins upon
19 recordation by USEPA under Section 40 CFR 96 and it goes
20 on, and the final sentence is what caused me to pause.
21 It says this automatic amendment of the budget permit
22 shall occur by operational law and will not require
23 further review, and I assume that means that once the
24 USEPA records it, it's a done deal?

1 MS. KROACK: Correct.

2 MS. McFAWN: What if USEPA does not approve it?

3 Is there a right to appeal or does not record it?

4 MS. KROACK: USEPA is administering this trading

5 program that they have set up a system where all of the

6 transfers deductions go through them and essentially

7 they're saying once I get that slip of paper and you

8 tell me to make an allocation to this unit or this unit

9 tells me to make a transfer from their account to

10 another account, then once I receive that paper and

11 assuming that it meets my requirements, I will do that
12 and your budget permit will be amended and there will be
13 no further review, and the idea of the budget permit is
14 the segregal portion of the permit and it's really only
15 dealing with the mechanics of the trading program.

16 MS. McFAWN: Thank you. This is a similar
17 editing question, Section 217.658 permitting
18 requirements Subparagraph B3, the other two
19 subparagraphs under B which are entitled budget permit
20 applications actually have a subtitle and I wondered if
21 the Agency could possibly come up with a subtitle for
22 three, something maybe a modification of budget permit,
23 something to that effect?

24 MS. KROACK: We'll look at it and make a

1 proposal.

2 MS. McFAWN: That would be great. Thanks. This
3 is more still a drafting question. Does the Agency have
4 any rule of thumb as to when it uses the word "may,"
5 "shall," "will"? Could you explain that to me so that
6 the Board realizes it and makes sure we have some
7 continuity on this?

8 MS. KROACK: "May" indicates there's an element
9 of it may or may not happen. It's not prescriptive.

10 Okay. And we use it as the Agency may adjust -- we use
11 it in Subsection B of Section 217.660 which says we may
12 adjust the Subpart U NOx trading budget available for
13 allocations by removing allowances for units that elect
14 low emitter status.

15 The reason for that is USEPA has indicated
16 informally that a unit that elects low emitter status
17 and does so before an allocation is made, it opts out of
18 the program, they may not require an adjustment of the
19 budget. So that's been indicated to us informally.

20 It's not in writing. It doesn't appear anywhere, but to
21 allow ourselves option of not necessarily having to
22 adjust the budget downwards, we use the term "may."
23 "Shall" is --

24

MS. McFAWN: Before you go on, that particular

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1 paragraph has been amended by the errata sheet?

2 MS. KROACK: Has it?

3 MS. McFAWN: Yes. Now, it has adding allowances,

4 so should that still remain the word "may"?

5 MS. KROACK: I need to find this change. Can you

6 tell me where it appears in the errata, Ms. McFawn?

7 MS. McFAWN: At ten.

8 MS. KROACK: You're right.

9 MS. McFAWN: I think that was an excellent
10 example you gave to me. I just wanted to make sure that
11 in fact --

12 MS. KROACK: You're right. In Subsection
13 217.660(b) is modified by the errata. "May" should be
14 become "shall."

15 MS. McFAWN: Excellent choice of an example.

16 MS. KROACK: Just another error on our part.

17 MS. McFAWN: That's quite all right. But let's
18 go on with the discussion of when you use "may" and now
19 when would you use "shall"? This means that you must,
20 in other words, now that it reads the Agency shall
21 adjust, you must do it when you add allowances.

22 MS. KROACK: Correct.

23 MS. McFAWN: And the operative verb is will, what
24 does that mean?

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1 MS. KROACK: "Will" means must again. I think
2 the choice is typically we try to use "will" rather than
3 "shall." Unfortunately that doesn't all carry through.

4 MS. McFAWN: So your preference is "will."

5 MS. KROACK: Our preference is "will."

6 MS. McFAWN: And that is a preference over "must"

7 as well?

8 MS. KROACK: Correct.

9 MS. McFAWN: I thank the audience for bearing
10 with us on this. This is part of rulemaking. I don't
11 know if you're the right person to answer it or not.
12 I'm going to move away from the minor changes to the
13 rules that I was questioning you on and I had a more
14 general question and that was -- maybe we discussed this
15 at the last hearing, but I don't recall it. That was
16 the new source set aside for new budget units under
17 Subpart U allocates for 3 percent of the total number.
18 They receive 3 percent of the total number of allowances
19 available for allocation. What was the basis of the
20 3 percent?

21 MS. KROACK: Frankly, it was really just a

22 choice. Five percent is what under the model NOx
23 trading rule USEPA starts with as a new source set aside
24 and in later years moved to 3 percent. We looked at our

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1 inventory of sources and agreed that there weren't a lot
2 of new nonEGUs coming into the program submitting
3 applications, but again, we wanted to have a new source
4 set aside in the event it was actually needed and so we
5 picked the lower 3 percent number. It's a good number.
6 It's a small number, but if you look at the Appendix E

7 new source set aside by subtracting columns 4 and 5,
8 there are few units that are receiving more than those
9 number of allowances, but many fall within that range
10 and it seemed like a number that if we had a new unit
11 coming in, there might be a round amount of allowances
12 that would be required, and it was just a -- you know,
13 it was a choice.

14 MS. McFAWN: It seems like you have a logical
15 basis and it was agreed to if I noticed at the table
16 when you were talking about Subpart U?

17 MS. KROACK: I would say that they didn't favor
18 the idea of new source set aside at all. I think I
19 indicated that in a statement of reasons, but we felt it
20 was important and, in fact, given the testimony we

21 received here today from LTV, it may, in fact, have been
22 prophetic.

23 MS. McFAWN: In other words, you might need to
24 use it for the LTV?

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1 MS. KROACK: We hope not, but there's always --
2 obviously this is going to be a matter of negotiation in
3 trying to resolve this issue, but it's one of the
4 possibilities of many possibilities. It's not our
5 favored possibility by any means.

6 MS. McFAWN: Hopefully you will give us comments
7 on LTV if you can before the end of the comment period
8 and let us know how you're working on that?

9 MS. KROACK: We will and I could state that we've
10 already made contact with USEPA about that situation and
11 we're working to try and get the budget increased to
12 reflect LTV's 1995 operations applying the same criteria
13 that were applied to other units in the inventory.

14 MS. McFAWN: That's good news. You're right on
15 top of this.

16 MS. KROACK: I think it was three or four days
17 ago.

18 MS. McFAWN: LTV's proposed a solution in their
19 testimony which was to put them in the rule, I think,

20 with an asterisk if I understood their testimony

21 correctly. Would the Agency recommend that?

22 MS. KROACK: I believe we want to add them to

23 Appendix E and put an asterisk to the number of

24 allowances merely because we would then hopefully not

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1 have to come in and amend Appendix E. In Section

2 217.660 and I think it's Subpart F, but let me look, it

3 is Subpart F, we have the following language: It says

4 if USEPA adjusts the Subpart U NOx trading budget as to

5 any individual budget unit, the Subpart U NOx trading
6 budget shall not be adjusted pro rata and only the
7 allowance allocation for that budget unit will be
8 adjusted.

9 That language we believe would allow us if we
10 make or are successful in this negotiation with USEPA to
11 make that allocation to LTV even though a number would
12 not appear in Appendix E, but their identifier as an
13 Appendix E is important for purposes of the integrity of
14 the rule as a whole.

15 MS. McFAWN: So we shouldn't include the number
16 they propose or any other number?

17 MS. KROACK: No, not this point in time. I would
18 suggest that number is not based on the same inventory

19 decisions that USEPA made in the SIP Call prior to
20 October of 1998 and that number is not likely to be
21 agreed to, but a lesser number, we hope, will be.

22 MS. McFAWN: Perhaps in your public comments, you
23 could suggest to us what you think might be the
24 language -- the appropriate language for a footnote, you

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1 could do that --

2 MS. KROACK: Yes.

3 MS. McFAWN: -- or LTV, of course, is free to

4 also suggest specific language to us.

5 MS. KROACK: We hope to work with Mr. Rieser,
6 their attorney in this matter, and agree to what that
7 language should look like. We just haven't had an
8 opportunity to do that yet.

9 MS. McFAWN: I do have a few more questions,
10 about 15 minutes worth. Could we go off the record?

11 (Discussion had off the record.)

12 HEARING OFFICER BEAUCHAMP: We're going to take a
13 break for lunch now. We're going to reconvene at 1:00.
14 The Board members need to attend a deliberative session,
15 so we're going to pause the questioning of the Agency
16 and we'll break for lunch and we'll reconvene at
17 1:00 p.m. Thank you.

18 (Recess taken.)

19 HEARING OFFICER BEAUCHAMP: We're back from lunch

20 and we're going to continue with questions for

21 Ms. Kroack of the Agency. Ms. McFawn?

22 MS. McFAWN: I just have a couple more questions.

23 I'll start with the easy ones. I need something on the

24 record from last time to clarify this if you could, and

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1 that was we were talking about the definition or the

2 possibility of a definition of EGU and nonEGU and at one

3 point, we were talking about it being very difficult to
4 separately define them and that's why they're treated
5 similarly under the NOx SIP Call by the USEPA. Could
6 you just elaborate on that for me a little bit, how
7 they're treated very similarly? I think it's obvious,
8 but I want to make sure.

9 MS. KROACK: Well, for the federal NOx SIP Call,
10 although they looked at the actual emissions for these
11 units in 1995 and then applied a different growth rate,
12 whether you were an EGU or a nonEGU and then sort of set
13 that as the budget, how they're treated with respect to
14 how they -- under the model rule -- how they get their
15 allocation, what kind of monitoring they're required to
16 do, what kind of recordkeeping and reporting, that was

17 very much the same and so, basically, there is
18 references throughout the SIP Call where USEPA says it's
19 hard to distinguish a nonEGU from an EGU once you get to
20 a certain size and, therefore, it's appropriate to
21 include them in this program and require part 75
22 monitoring for the emission cap and all the other things
23 that come with the trading program.

24 MS. McFAWN: But they did use different growth

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1 factors.

2 MS. KROACK: Yes, they did, and I actually
3 just -- we had a discussion. They actually used
4 different growth factors for nonEGUs based on where you
5 were located within the state, but for electrical
6 generating units, it was a standard across the state.

7 MS. McFAWN: We were talking at the last hearing
8 about part 75 monitoring and as it was applied under
9 Subpart X and you said -- I think it was you, I'll
10 double check that, yes, this was during your slide
11 presentation -- an additional element is that shutdown
12 units are not limited under Subpart X. Are they limited
13 elsewhere?

14 MS. KROACK: Well, under the model trading group
15 or when you look at the allocation methodology, it's

16 based on heat input, so if you don't have heat input, if
17 you shutdown, you would not get an allocation. So that
18 is what I meant how they're treated differently under
19 Subpart X.

20 Subpart X basically says once you set your
21 baseline, you will continue to get an allocation in the
22 future even though you shutdown, whereas the model rule
23 doesn't really envision allowing shutdown units to
24 receive allocations because allocations are based three

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1 years in the future based on the past heat input, and so
2 after you got your initial three-year allotment, under
3 the model trading rule, you would get nothing in the
4 future because you would have no heat input.

5 MS. McFAWN: Then I wanted to ask you some
6 questions of the Agency, the panel, about Mr. Marder's
7 testimony. This was discussed at our last hearing in
8 part and then he's added more information and he has
9 raised the question of these post-1995 units should be
10 eligible under Subpart X and he's raised a couple
11 reasons of why that should be, one being that isn't the
12 real crux of this whether or not their emissions pre or
13 post-1995 are verifiable or quantifiable and federally
14 enforceable and also part 75 modeling which seems to be

15 the crux of a lot of problems with this is allowed for
16 pre-1995 sources under Subpart X and so why wouldn't it
17 be allowed? I'm not sure if I have that correct. Let
18 me strike that last part and just ask you simply why
19 shouldn't we include the post-1995 sources in the
20 voluntary program?

21 MS. KROACK: There are a couple of reasons why we
22 submitted the proposal that didn't provide for that.
23 The first one is is that we're basically going to USEPA
24 and arguing that they should make a budget shift from

1 the nontrading portion of our statewide NOx budget to
2 the trading portion, and it's much easier to sell that
3 to make that justification if the units were included in
4 setting that budget and if they were built after 1995,
5 they weren't included in setting the budget, and then we
6 need a number to point to that says included in the
7 inventory this amount, we should be able to take them
8 and move them into the trading portion whatever
9 reductions they get from that number. That's a lot
10 easier case to make than otherwise.

11 The other reason is these units built after
12 1995 won't have a baseline, a number in that inventory.
13 It has to be established, and under the opt-in

14 provisions, it requires that that baseline is
15 established through part 75 monitoring. Under
16 Subpart X, the requirement is you look at actual
17 emissions in the annual emission report or you do part
18 60 monitoring.

19 For post-1995 units, that baseline is a lot
20 less easy to establish with certainty and even if the
21 baseline in the 1995 inventory were incorrect, it was at
22 least the number that USEPA used in establishing our
23 statewide budget, so that the level of uncertainty is
24 addressed in that regard whereas post-1995 units, the

1 level of uncertainty is high and without post -- part 75
2 monitoring being applied, we are not very confident that
3 USEPA will accept that proposal and those are
4 fundamentally the two reasons.

5 MS. McFAWN: But the state is trying to capture
6 as much as they can to put into the trading bank,
7 trading budget. Couldn't the case be made to the USEPA
8 maybe at a later date?

9 MS. KROACK: We could always once we get through
10 the initial approval process hopefully make -- suggest
11 that this should be included in other ways. Maybe there
12 will be the other sectors in the future, off road,

13 mobile or mobile sources for which the state might come
14 up with a program where we say we've got addition NOx
15 reductions, you should recognize those and move them
16 into the trading portion of the budget.

17 Again, that's, I think, possible, but given
18 where we're going right now and that it's not really
19 permitted under the SIP Call, we're sort of, in our
20 opinion, pushing the envelope, but I think Mr. Romaine
21 has something he wants to add here.

22 HEARING OFFICER BEAUCHAMP: Before Mr. Romaine
23 answers, I'll ask the court reporter if you could just
24 swear in the rest of the Agency.

1 (Witnesses duly sworn.)

2 MR. ROMAINE: I was just going to add that one of
3 the other factors is certainly the growth factors that
4 in terms of the way the budget has been developed, it
5 already has a growth factor in their existing sources
6 that has been built in the inventory, so to account for
7 the actual construction of a new source in the future on
8 top of the growth factor is really going to be double
9 counting, so to the extent that new sources occur after
10 1995, in some respects we've already addressed them in
11 the way we've developed our initial baseline budget.

12 MS. McFAWN: But if we were to include them, it
13 would probably encourage retirement and replacement
14 would be more efficient? I just wondered if we're
15 not -- I think it was included in the IERG's testimony
16 that we are chilling a need for retirement resources
17 that are post-1995 and I guess that is why I thought,
18 well, you know, when they get closer to retirement,
19 don't we want to capture those retired emissions as part
20 of our budget?

21 MS. KROACK: Again, Board Member McFawn, I think
22 that if you could establish for USEPA a baseline that
23 they felt comfortable in by like requiring part 75
24 monitoring, we could probably make that case, but the

1 goal was to avoid part 75 monitoring especially for
2 shutdown units because we recognize that the application
3 of part 75 monitoring for a one-year period and then
4 shutting down is not practical.

5 MS. McFAWN: I'm probably missing something here,
6 but why couldn't you use three years factual data, just
7 go actual as a baseline?

8 MS. KROACK: Because actual emissions for many of
9 these units would be established by emission factors,
10 the AP 42 factors, and USEPA would not accept those as

11 making one ton of NOx reduction from -- by using that
12 factor as the same as one ton of NOx verified through
13 part 75 monitoring, and the NOx SIP Call unfortunately
14 is replete with discussions of why part 75 monitoring is
15 so critical in USEPA's mind to the program and, in fact,
16 in our discussions with them on Subpart X, that is their
17 number one fault with our Subpart X proposal is the lack
18 of part 75 monitoring.

19 So we are trying to get a program that we
20 think is approvable and it's just our opinion that
21 post-1995 units that don't have a number in the
22 inventory and that don't apply part 75 monitoring, the
23 likelihood of getting those reductions recognized is, we
24 believe, slim at this point in time. You never know

1 what the future might hold.

2 MS. McFAWN: Well, that's true.

3 MR. MARDER: I have a couple of follow-ups. In

4 establishing a baseline for a unit, could you not ask

5 for a stack test?

6 MS. KROACK: Mr. Romaine, I think you're better

7 capable of describing.

8 MR. ROMAINNE: Well, it's theoretically possible

9 to ask for a stack test to determine a baseline for an

10 emission unit. That is something that historically we
11 have discouraged and it goes back to the question of
12 under what conditions would you be doing that particular
13 stack test, and a stack test is only held under one set
14 of operating conditions, it looks at what can be, in
15 some respects, an artificial condition of the boiler to
16 the extent somebody operates it to maximize NOx
17 emissions, so again as Mr. Marder suggested, people
18 might be able to manipulate their heat input to maximize
19 a baseline, similar possibilities exist, maybe
20 theoretically, for somebody to maximize emissions if
21 they were conducting a stack test to establish a
22 baseline.

23 The best types of stack tests for

24 establishing baselines are historical ones that were not

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1 performed without that bias for the purpose of
2 determining emissions perhaps for compliance, perhaps
3 for verifying the emissions for the annual emission
4 reports, but not with the specific purpose in mind of
5 generating a baseline where it's obviously the source's
6 best interest to have a large number as possible.

7 MR. MARDER: But you can, in requiring the stack
8 test, ask for the submission of a plan especially under

9 the new regulations we just adopted and review and
10 comment on that plan, can't you?

11 MR. ROMAINE: Yes.

12 MR. MARDER: Laurel, when you discussed this with
13 USEPA, the issue of 75 monitoring, was it very clear in
14 the discussions whether USEPA was more concerned or
15 equally concerned with the question of monitoring after
16 the unit was a Subpart X unit or whether it was a
17 question of part 75 monitoring to establish the
18 baseline, two monitoring scenarios?

19 MS. KROACK: In our discussions on Subpart X so
20 far which have been preliminary and not complete by any
21 means, they've been concerned about it for both issues,
22 but particularly for establishing the baseline.

23 MR. MARDER: They were more concerned with
24 establishing the baseline than the ongoing monitoring of

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1 a unit?

2 MS. KROACK: In some sense I would say that those
3 were our initial discussions. They expressed concerns
4 on both fronts, but that was where their focus was. We
5 don't have confidence in the baseline without part 75
6 monitoring.

7 MR. MARDER: What do you think would happen, and

8 if you can answer this, if USEPA were to look at
9 Subpart X and they would pick out one item let's say
10 there's an objection, is it normal that they would issue
11 a conditional approval or is it normal that they would
12 just throw the whole thing out?

13 MS. KROACK: We haven't really had a proposal
14 like Subpart X, but with other regulatory proposals that
15 were required under the Clean Air Act in which we
16 submitted a SIP, they're more likely to issue a
17 conditional approval.

18 MR. MARDER: And that would then give us time to
19 review or change it?

20 MR. ROMAINE: It does depend whether USEPA
21 considers it a fatal flaw of the regulation or whether

22 it's something that could be adequately addressed with
23 some form of relatively small fix, a temporary
24 commitment or something like that, to certainly address

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1 it in the interim until that fix is made.

2 MR. LAWLER: I'd like to add just a little bit to

3 what Laurel said that EPA seems to be just generally

4 very concerned that sources that didn't do part 75

5 monitoring could get into the trading program and so

6 we're just not -- part of our rationale, as Laurel has

7 said, is trying to not push the envelope too far on all
8 this is and so there is some judgment on our part and I
9 think that's what you're hearing being reflected here
10 today, but we don't know how far you could push them
11 into accepting it, conditionally approving it or just
12 saying they won't approve it and we're trying to bridge
13 the gap.

14 HEARING OFFICER BEAUCHAMP: I keep seeing a hand
15 come up over here. Sir, could you identify yourself for
16 the record.

17 MR. DENNIS: Pat Dennis with ADM. You mentioned
18 having to use emission factors to calculate and
19 determine a baseline for a post-95 unit, but isn't it
20 true that the New Source Performance Standard requires

21 continuous monitoring for any new boiler above 100
22 million Btu per hour, part 60 monitoring?

23 MR. ROMAINE: Certainly part 60 monitoring would
24 be required for a new unit. That could involve some

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1 form of barometric monitoring I believe if the heat
2 input was between 100 and 250. I think that's
3 acceptable, so it might not necessarily -- it certainly
4 wouldn't necessarily be part 75 type monitoring.

5 MS. KROACK: And it also only applies to boilers

6 over a certain size, so there are two issues with it.

7 MR. DENNIS: Then I also heard mention of a
8 growth factor as one of the -- part of the rationale for
9 not applying Subpart X to post-95 units. Do you know or
10 can the Agency say whether the growth factor that was
11 used for nonEGU units was a negative growth factor or a
12 positive growth factor?

13 MS. KROACK: I think Mr. Forbes could answer that
14 question.

15 MR. FORBES: That would depend on the facility.
16 The growth factors that we use were developed by the --
17 what's called an EGAS. It's a USEPA federal growth
18 model and it depends on the location of the source, the
19 type of operation, the particular industry. It's all

20 forecast based on that particular industry's growth with
21 respect to the area.

22 MR. DENNIS: But is it not true though that for a
23 large number of sources at least in part of the state
24 that growth factor that was applied was, indeed, a

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1 negative one?

2 MR. FORBES: I would say for some sources, I'm
3 not sure it would be a large number, but certainly there
4 are sources in a lot of the central southern parts of

5 the state that have declined permits.

6 MR. DENNIS: And if, in fact, the negative growth
7 factor was applied, then the rationale of double
8 counting a unit may not apply at least for that source?

9 MR. ROMAINE: I think the rationale is still
10 there, in fact. We have relied on there being
11 reductions and we wouldn't be getting those reductions
12 that our statewide budget anticipated.

13 MR. DENNIS: Let me see if I understand, the
14 Agency had projected that there would be a reduction
15 when, in fact, there was, in fact, an increase in NOx
16 emissions from a source?

17 MR. ROMAINE: I guess again the problem is we're
18 talking in specifics and generalities at the same time.

19 When USEPA is trying to develop these growth factors, it
20 is trying to look at what's happening to the overall
21 economy of an area and saying that overall there are
22 going to be reductions in a particular area, let's say
23 Decatur. They are not necessarily in a position to say
24 that there won't be certain industries in Decatur that

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1 will experience growth where other ones are shrinking,
2 but in terms of putting the inventory together, they
3 have told us these are the official EGAS factors that

4 have to be used that have to be factored in the
5 inventory.

6 MR. MARDER: Mr. Lawler stated, if I'm correct,
7 that USEPA has expressed concerns with nonpart 75
8 monitoring units being part of the program, is that
9 basically what you said?

10 MR. LAWLER: That's correct.

11 MR. MARDER: If an X unit opts to shutdown and
12 has transferred its emissions over to a new unit, in
13 this case, it is not part of the trading program; isn't
14 that correct?

15 MR. LAWLER: That's correct.

16 MR. MARDER: Monitoring isn't an issue for that
17 group. The only issue would be the baseline, the

18 original baseline.

19 MR. LAWLER: I see your point.

20 MR. MARDER: I just have one question. Is there
21 any difference to the environment for emissions that are
22 reduced real verifiable, quantifiable, federally
23 enforceable emissions that are reduced from a pre or a
24 post-1995 unit, is there any difference to the

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1 environment?

2 MS. KROACK: No.

3 MR. ROMAINE: I think I was going back to your
4 question, Marili, in terms of an issue of retirement of
5 units and encouraging retirement of units, I think you
6 have to step back and look how the USEPA would have
7 treated allocations under their proposal. I don't know
8 the model rule what they would have done was given
9 allocations based on the heat input of actual emission
10 units, so the thing that discourages retirement of units
11 in this program is the way that it responds to
12 industrial concerns. We've given fixed allocations to
13 existing sources. If, in fact, we didn't have fixed
14 allocations and the allocations changed each year, then,
15 of course, there would be an incentive to operate more
16 efficient units that would have lower NOx emission

17 rates.

18 MS. KROACK: In fact, that's how the allocation
19 scheme works under Subpart W and that's one of the
20 things that it -- in fact the reason we went with that
21 allocation scheme for the electrical generating unit
22 industry.

23 HEARING OFFICER BEAUCHAMP: Anything further,
24 Mr. Marder?

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1 MR. MARDER: Nothing.

2 HEARING OFFICER BEAUCHAMP: Any other questions

3 for the Board -- I sorry -- for the Agency?

4 MS. McFAWN: Could you generally address

5 Mr. Marder's comments concerning the calculation of

6 credible NOx emissions which again I refer to as the

7 80/20 split? I think Mr. Rieser had questions on this,

8 and Mr. Marder's testified to it, and it seems to me

9 that they've made some arguments that are fairly that --

10 I know it's part of part 75 monitoring, but why that

11 number and why in the case of a shutdown do we have to

12 set aside 20 percent or retire 20 percent?

13 MS. KROACK: Obviously for shutdown units for

14 which there was a number in an inventory, the argument

15 is different. The real issue was under model trading

16 rule, opt-in units had to do part 75 monitoring for one
17 year and establish a baseline even though a number for
18 many of them would have been included in the state's
19 inventory. USEPA was still requiring that they do one
20 year of part -- one full control season of part 75
21 monitoring to establish a baseline before they could
22 opt-in and then going forward, they would continue to
23 have to do part 75 monitoring and continue to have heat
24 input to get an allocation.

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1 It's true that for our budget we have a
2 number in there for 1995 units and for shutdown for
3 them, you could say, well, it's that number in your
4 budget; however, our budget, statewide budget, also
5 envisions that a certain number of units would, in fact,
6 shutdown and there would be a certain amount of growth
7 and all of that was accounted for in setting the budget.
8 There would be some units that were retired, some units
9 that would grow. With shutdowns, we're really sort of
10 taking out of that statewide budget natural retirement
11 of older units and allowing those allowances to be moved
12 and then, in fact, taking that component out of managing
13 our statewide budget.

14 So part of our -- the reason -- and we picked

15 80/20, we could have picked a lot of numbers, but for
16 units, the 20 percent retirement seemed to be a way that
17 we could address that point and we could also have some
18 ammunition to negotiate with USEPA to say look we're
19 actually retiring something for the benefit of air
20 quality in this program. This is shifting people into a
21 cap program. We're retiring something for air quality.
22 You should look upon this proposal favorably.

23 HEARING OFFICER BEAUCHAMP: Mr. Rieser, do you
24 have a comment?

1 MR. RIESER: No.

2 HEARING OFFICER BEAUCHAMP: I thought you were
3 raising your hand.

4 MS. McFAWN: If they don't accept Subpart X, then
5 they're not in the budget at all?

6 MS. KROACK: Correct. We have provisions in
7 Subpart X for withdrawing which is one of the reasons.

8 MS. McFAWN: Now, Mr. Marder said that opt-in
9 sources under Subpart U, they could use an alternative
10 part 75.

11 MS. KROACK: No. The opt-in units have to use
12 part 75 monitoring. Part 75 has a provision for which
13 you could -- there are different types of monitoring

14 under part 75. They're all stems, but there are -- I
15 don't know the details, but there are tweaks and bells
16 and whistles depending on your unit and how it's
17 operated.

18 There's also a provision that allows you to
19 petition the Agency and USEPA for an alternative,
20 although it was pointed out in somebody's testimony
21 since 1993, USEPA has never granted one of these
22 petitions, but part 75 monitoring is required for opt-in
23 units under Subpart U.

24 MS. McFAWN: So then if I understand this more

1 clearly now, you say you have to do part 75 monitoring
2 in order to be part of this system. Maybe they don't
3 have to be the most restrictive part of that type of
4 monitoring, but a lesser type.

5 MS. KROACK: They have to do whatever part 75
6 would require for them. Part 75 makes provisions for --
7 maybe Mr. Romaine could help me here, but there are
8 various types of things that you could do in part 75
9 that vary somewhat.

10 Chris, do you have anything to add to that?

11 MS. McFAWN: Would any of those things help out
12 in the instance of a shutdown? Are any of those

13 alternatives viable as opposed to the contrary that if

14 we shutdown sources --

15 MR. ROMAINE: I would have to assume they would

16 not be because the basis for those alternatives would be

17 technical issues with regard to monitoring which is an

18 entirely different dimension than it's going to

19 shutdown. It's going to shutdown in a year will not buy

20 you anything with USEPA on technical feasibility of

21 doing monitoring.

22 MR. MARDER: Can I comment?

23 HEARING OFFICER BEAUCHAMP: Certainly.

24 MR. MARDER: We spent a lot of time negotiating

1 part 75 and we are opposed to Subpart U units having to
2 use part 75. One of the tenants we negotiated under was
3 we will not do something that we think overtly will have
4 USEPA reject the proposal.

5 On the subject of part 75, we essentially
6 said uncle. We give up. There's very, very little
7 wiggle room under part 75 and the language in Subpart U
8 attempts to exercise whatever wiggle room we can get
9 knowing that it's very little.

10 MS. McFAWN: That helps. On the last point, IERG
11 through Mr. Marder's testimony proposed the definition

12 of product shifting, production shifting. It's on page
13 12, if I recall of Mr. Marder's testimony, and I just
14 wondered what the Agency's thoughts were on that
15 definition or you can defer and I would like to have it
16 on the record as opposed to public comment.

17 MS. KROACK: At this point, I would say that
18 we're not in favor of the definition. We don't believe
19 it necessarily adds anything. We honestly believe that
20 the question of production shifting will have to be
21 case-by-case because we don't believe there is anyway to
22 set a standard and it was sort of Board Member Melas'
23 question about a widget versus a super widget and, you
24 know, basically you have decreased production levels

1 because of economic conditions, but you go to the plant
2 next door building the same widget and you could build
3 it at plant A. I mean there are just a number of
4 different issues and I really believe it's going to have
5 to be case-by-case and I don't think that a definition
6 would really add much here and I believe Mr. Romaine has
7 something.

8 MR. ROMAINE: I certainly agree with everything
9 that Laurel has said. One of the complicated things
10 here is we are trying to shift things between the

11 budget. For EGUs it's fairly straightforward. That
12 category is fairly well -- but as we heard from the
13 University of Illinois, the difference between being a
14 facility that's subject to Subpart U can be the
15 difference between 15 million Btu per hour figuring out
16 exactly when the production shifting would occur
17 wouldn't necessarily be made any easier if you have this
18 constraining definition to work with.

19 MS. McFAWN: He gave us four examples of two
20 where they would use production shifting and two that
21 would not involve production shifting. Did you have any
22 comments on those? Did you agree with his conclusions
23 and that those were good representative examples?

24 MS. KROACK: I'm looking at it for a moment.

1 HEARING OFFICER BEAUCHAMP: Would you like a few
2 moments off the record to review it?

3 MS. KROACK: Yeah, that would be helpful.

4 HEARING OFFICER BEAUCHAMP: Let's go off the
5 record for a moment.

6 (Short interruption.)

7 MS. KROACK: Board Member McFawn, while we
8 appreciate the opportunity to offer comment on each of
9 those examples, frankly, we'd rather just say that we

10 agree that production shifting is something that we need
11 to prevent under Subpart X and whether or not we agree
12 with these examples as examples of what clearly are or
13 what clearly not be, we would rather not respond to.

14 There are just too many variations and the general
15 concept of avoiding production shifting we agree with,
16 but these examples really are difficult to comment on.

17 MS. McFAWN: Well, I would hope you would think
18 about them and possibly comment on a later time on
19 these. You all reviewed so much. These examples, they
20 are very illustrative to the regulating community and to
21 persons like myself that have to impose the regulations
22 and so it would be nice if you could offer a comment.
23 We realize that it's put on a case-by-case basis, but if

24 you could kind of understand the playing field.

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1 MS. KROACK: We'll have another discussion on

2 that and see if we can respond.

3 MS. McFAWN: And then I have one final question

4 and it's kind of radical, but you don't have to comment

5 on it today, but would it be -- and I mean from all the

6 participants, not just the Agency, should we think about

7 submitting Subpart X separately?

8 MS. KROACK: Actually, we have discussed how to

9 handle that. We have some concerns that we don't want
10 USEPA tying approval of Subpart U to Subpart X. On the
11 other hand, submitting them as a package has the
12 advantage of making them look at Subpart X in a timely
13 fashion, so internally, I don't believe we resolved
14 that. There are reasons to go both ways. Mr. Lawler
15 has something to add.

16 MR. LAWLER: I was going to add to what Laurel
17 said is the fact that the Board considers them together
18 doesn't mean ultimately that EPA can't split them apart
19 also I mean especially if the state would end up asking
20 for that. I mean, we could essentially see how things
21 are going and ask them to be put in sort of two
22 different dockets by USEPA, but it wouldn't make a

23 different whether the Board considers them as one or
24 not.

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1 HEARING OFFICER BEAUCHAMP: Mr. Marder?

2 MR. MARDER: Reserving the option of changing my

3 mind, I think we would strenuously object to that for a

4 number of reasons, first of all, to submitting these

5 separately. I think the Board has to adopt or not adopt

6 a regulation and then it's a state regulation that

7 fulfills our responsibilities under the state law. It

8 may not under federal law. State law -- it's a state
9 regulation. That's what we live under.

10 The second thing that we haven't talked much
11 about is the legislative mandate of the Section 9.9
12 Environmental Protection Act. That was not done in a
13 vacuum. That was not done lightly. It was an agreed to
14 provision, amendment to the Environment Protection Act
15 that incorporated a number of imperatives, if you will,
16 that the business community felt was necessary as we
17 moved ahead in this rather rigorous program and
18 ultimately that IEPA concurred with. It wasn't a
19 contest over this provision. It was an agreed to
20 provision.

21 The Section D2 I believe it is very clear. I

22 mean nothing is clear in legislation, but the intent of
23 it that there will be a regulation that will allow for
24 voluntary reductions of nonEGU -- nonadditional budget

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1 units, the legislature clearly mandated that that
2 occurs, so with that, it appears to us that it is the
3 direction of the general assembly that the Board adopt a
4 program that codifies the intent of that section and
5 submit it to USEPA for approval. We can't tell USEPA
6 what to do, but I believe the Board is bound by the

7 legislative directive.

8 MS. McFAWN: Just for the record, it's D3.

9 MR. MARDER: Okay.

10 MS. McFAWN: That's just for the written record
11 and we were well aware of that. I was just speculating
12 in my mind the risk in voluntary program if we didn't
13 think it would tie down --

14 MR. MARDER: I think that Laurel and Dennis,
15 whoever said it, is correct. USEPA could do whatever
16 they want. They could say we're rejecting this, but
17 we're accepting the rest. We hope they don't. We know
18 that even though we have some differences, I know that
19 the IEPA is going to push hard for the incorporation of
20 Subpart X and once the Board acts, whichever way you

21 act, I think they're going to push just as hard because
22 it's the state law and that's the responsibility.

23 MR. LAWLER: Can I add just a little to what
24 Mr. Marder said too is I think some of what you've been

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1 hearing from us today is our attempts to make this as
2 palatable as possible to EPA so it will be approved also
3 and so some of the discussion that's gone on here is
4 you're getting some of our thoughts on making this as
5 approvable as possible and that's what we've proposed to

6 you. It's something that we hope is as close to being
7 approvable by EPA as possible.

8 HEARING OFFICER BEAUCHAMP: I'll ask at this time
9 if there are any other questions for Ms. Kroack or the
10 Agency panel? Seeing none, thank you. At this time,
11 I'd like to ask Mr. Messina if the Agency will be
12 canceling the request of the third hearing.

13 MR. MESSINA: We would ask that it be canceled.

14 HEARING OFFICER BEAUCHAMP: Good. In that case,
15 the record for public comments closes 14 days after the
16 Board receives the transcript from today's hearing. We
17 should receive that transcript next Tuesday,
18 December 26th. Fourteen days from that time will be
19 Tuesday, January 9th, 2001, 4:30 p.m. on January 9th,

20 the record will close.

21 Before that time, parties may file a public
22 comment. Comments must be received, as I said, by 4:30.

23 If you do file a public comment, please file the
24 original and nine copies with the Board. In addition,

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1 please contact me for a current copy of the service list
2 so you could send a copy of your public comment to those
3 on the list.

4 The Board will post the transcript from this

5 hearing on its website. Our website is
6 <http://www.ipcb.state.il.us>. The transcript should be
7 available on our website next Wednesday. You may also
8 obtain a hard copy of the transcript by contacting the
9 court reporter directly or from the Board. Please note
10 that the Board charges 75 cents a page.

11 Let me ask if there are any other matters
12 that need to be addressed at this time?

13 Mr. Messina, is there anything further from
14 the Agency?

15 MR. MESSINA: No, there is not.

16 HEARING OFFICER BEAUCHAMP: In that case, on
17 behalf of the Illinois Pollution Control Board, let me
18 extend our sincere thanks to everyone present here, all

19 those who participated in these hearings, for your
20 contribution to the development of this rule.

21 We look forward to incorporating your
22 comments into the final adopted rule and extend our
23 thanks to the Agency for your hard work. We know
24 everyone who traveled this week, it was difficult and we

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1 would like to extend a special thanks to all of those
2 and also a thanks to members of the regulated community
3 for your attention and comments on this matter.

4

This matter is hereby adjourned.

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(End of proceeding.)

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3 I, Michele J. Losurdo, Certified Shorthand
4 Reporter of the State of Illinois, do hereby certify
5 that I reported in shorthand the proceedings had at the
6 taking of said hearing, and that the foregoing is a
7 true, complete, and accurate transcript of the
8 proceedings at said hearing as appears from my
9 stenographic notes so taken and transcribed under my
10 personal direction and signed this _____ day of
11 _____, 2000.

12

13

14

15 Notary Public, DuPage County, Illinois

CSR No. 084-004285

16 Expiration Date: May 31, 2001.

