

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
NO_x TRADING PROGRAM SUNSET)	R09-
PROVISIONS FOR ELECTRIC)	(Rulemaking - Air)
GENERATING UNITS ("EGUS"))	
AMENDMENTS TO 35 ILL.)	
ADM. CODE PART 217.SUBPART W)	

NOTICE

TO:

John Therriault, Assistant Clerk
 Illinois Pollution Control Board
 James R. Thompson Center
 100 West Randolph, Suite 11-500
 Chicago, Illinois 60601

Matthew Dunn, Chief
 Division of Environmental Enforcement
 Office of the Attorney General
 69 W. Washington St., Suite 1800
 Chicago, Illinois 60602

Virginia Yang, Deputy Legal Counsel
 Illinois Dept. of Natural Resources
 One Natural Resources Way
 Springfield, Illinois 62702

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the REGULATORY PROPOSAL FOR NO_x TRADING PROGRAM SUNSET PROVISIONS FOR ELECTRIC GENERATION UNITS ("EGUs"): AMENDMENTS TO 35 ILL. ADM. CODE PART 217.SUBPART W, APPEARANCE, MOTION TO EXPEDITE, and AFFIRMATION of the Illinois Environmental Protection Agency a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: /s/ Rachel L. Doctors
 Rachel L. Doctors
 Assistant Counsel
 Division of Legal Counsel

DATED: April 21, 2009
 1021 North Grand Ave. East
 P.O. Box 19276
 Springfield, Illinois 62794-9276
 217.782.5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NO_x TRADING PROGRAM SUNSET) **R09-**
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GENERATING UNITS (“EGUS”))
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TABLE OF CONTENTS OF REGULATORY SUBMITTAL

Following is a Table of Contents of all pleadings and documents included with the proposed regulatory action:

1. Notice of Proposal
2. Appearance of Rachel L. Doctors, Assistant Counsel, for the Illinois Environmental Protection Agency
3. Director Douglas Scott’s Proposal of Amendments
4. Economic and Budgetary Analysis
6. Statement of Reasons
7. Statement of Reasons Exhibits:
 - A. First e-mail sent from Rob Kaleel dated March 19, 2009
 - B. Second e-mail sent from Rob Kaleel dated March 19, 2009
8. First Notice
9. Proposed Amendments to 35 Ill. Adm. Code Part 217.Subpart W:
10. Synopsis of Testimony
11. Motion to Expedite
12. Documents Relied On
 - *a. Illinois Environmental Protection Act (415 ILCS 5/et. seq.)
 - *b. The Clean Air Act, as amended in 1990 (42 U.S.C. §7401 et seq.)

- *c. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule, 70 *Fed. Reg.* 25162 (May 12, 2005)
- *d. Approval and Promulgation of Air Quality Implementation Plans; Illinois; Oxides of Nitrogen Regulations, 66 *Fed. Reg.* 56454 (November 8, 2001)
- *e. Approval of Implementation Plans of Illinois; Clean Air Interstate Rule, 72 *Fed. Reg.* 58528 (October 16, 2007)
- *f. *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008)
- *g. *North Carolina v. USEPA*, 550 F.3d 1176 (C.A.D.C. Cir. 2008)

13. Certificate of Service

*Copies of documents with an asterisk beside the letter have not been provided.

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APPEARANCE

The undersigned, as one of its attorneys, hereby enters an Appearance on behalf of the Illinois Environmental Protection Agency.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: /s/ Rachel L. Doctors
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: April 21, 2009
1021 North Grand Ave. East
P.O. Box 19276
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
PROPOSAL OF REGULATIONS

The Illinois Environmental Protection Agency moves that the Illinois Pollution Control Board adopt the attached regulations.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Douglas P. Scott
Director

DATED: *Apr. 21, 2009*

**Agency Analysis of Economic and
Budgetary Effects of Proposed Rulemaking**

Agency: Illinois Pollution Control Board

Part/Title: Nitrogen Oxides Emissions (35 Ill. Adm. Code Part 217)

Illinois Register Citation: _____

Please attempt to provide as dollar-specific responses as possible and feel free to add any relevant explanation.

1. Anticipated effect on State expenditures and revenues.

(a) Current cost to the agency for this program/activity. \$15,000 per year
(approximately)

(b) If this rulemaking will result in an increase or decrease in cost, specify the fiscal year in which this change will first occur and the dollar amount of the effect.

No change in expense to the Illinois EPA is expected, as the NO_x SIP Call Trading Program has been replaced by the CAIR NO_x Ozone Season Trading Program.

(c) Indicate the funding source, including Fund and appropriation lines, for this program/activity.

Clean Air Act Permit Program Fund (CAAPP)

(d) If an increase or decrease in the costs of another State agency is anticipated, specify the fiscal year in which this change will first occur and the estimated dollar amount of the effect. No increase or decrease in costs to another State agency is anticipated, as the Illinois EPA is the only State agency that administers the NO_x SIP Call Trading and CAIR NO_x Ozone Season Trading Programs.

(e) Will this rulemaking have any effect on State revenues or expenditures not already indicated above? No.

2. Economic effect on persons affected by the rulemaking:

(a) Indicate the economic effect and specify the persons affected:

Positive x Negative _____ No effect _____

Persons affected: Owners and operators of electric generating units subject to the requirements of 35 Ill. Adm. Code 217.Subpart W.

Dollar amount per person: _____

Total statewide cost: _____

- (b) If an economic effect is predicted, please briefly describe how the effect will occur.
Adoption of this rulemaking will eliminate duplicate requirements.

- (c) Will the rulemaking have an indirect effect that may result in increased administrative costs? Will there be any change in requirements such as filing, documentation, reporting or completion of forms?

The rulemaking should have no indirect effect that may result in increased administrative costs.

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PROVISIONS FOR ELECTRIC) **(Rulemaking - Air)**
GENERATING UNITS:)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217.SUBPART W)

STATEMENT OF REASONS

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") hereby submits this Statement of Reasons to the Illinois Pollution Control Board ("Board") pursuant to Sections 10, 27 and 28 of the Environmental Protection Act ("Act") (415 ILCS 5/10, 27 and 28) and 35 Ill. Adm. Code 102.202(b)) in support of the attached proposed amendments. Included in this proposal are amendments to 35 Ill. Adm. Code Part 217, Subpart W. This proposal amends the most recent version of Part 217.Subpart W as found on the Board's website.

I. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S PROPOSAL

a. Background – The NO_x Trading Program

Subpart W of Part 217 was adopted by the Board on December 21, 2000. This Subpart received approval by the United States Environmental Protection Agency ("USEPA") as part of the Illinois State Implementation Plan ("SIP") for ozone on November 8, 2001. 66 *Fed. Reg.* 56449. Subpart W regulates nitrogen oxides ("NO_x") emissions from utility boilers, or electric generation units ("EGUs"). Illinois was required to regulate these sources pursuant to USEPA's NO_x SIP Call. 63 *Fed. Reg.* 57356 (October 27, 1998). Subpart W implemented the NO_x Trading Program for EGUs in Illinois to reduce ozone transport and meet Illinois' obligations

pursuant to Sections 110(a) (2) and 126 of the Clean Air Act (“CAA”) and 40 CFR 51.121 for EGUs. The emissions reductions helped the two ozone nonattainment areas in Illinois attain the (1997) 8-hour ozone National Ambient Air Quality Standard (“NAAQS”). In addition, the continued implementation of the federal NO_x Trading Program was required under Phase I of the 8-hour ozone implementation rule. (40 CFR 51.905(f)).

b. The New NO_x Ozone Season Trading Program

On May 12, 2005, the Clean Air Interstate Rule (“CAIR”) was adopted with the purpose of replacing the NO_x SIP Call Trading Program beginning with the 2009 control period and adding two new trading programs addressing annual emissions of NO_x and sulfur dioxide. *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to Acid Rain Program; Revisions to the NO_x SIP Call*, 70 Fed. Reg. 25162 (May 12, 2005). Provisions implementing CAIR in Illinois were adopted by the Board in 35 Ill. Adm. Code 225 (R06-22) and approved by USEPA on October 16, 2007. 72 Fed. Reg. 58528. The CAIR provisions as set forth in Part 225.Subpart E include a trading program for control of NO_x emissions during the ozone season that replaces the provisions in Part 217.Subpart W for EGUs beginning with the 2009 control period (May 1 through September 30) and thereafter. Part 225.Subpart E incorporated in large part applicable provisions from the federal CAIR rule as required for federal approval.

While the State regulatory process was pending, the federal CAIR rule was reviewed pursuant to a number of petitions for review. On July 11, 2008, the United States Court of Appeals vacated the CAIR rule in its entirety and remanded the rule back to USEPA for revision. *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008). The court in its July 2008 opinion stated that pending the remand of the CAIR program to USEPA, the provisions of the

NO_x SIP Call Trading Program would remain in place.

However, the same parties that had petitioned for review, along with USEPA, then petitioned for rehearing on the court's decision to vacate and requested that the rule be reinstated during the remand. On December 23, 2008, the court granted the rehearing and unvacated CAIR with implementation to begin with the original control period in 2009. *North Carolina v. USEPA*, 550 F.3d 1176 (C.A.D.C. Cir. 2008).

c. This Proposal

With the reinstatement of the CAIR program, Illinois' EGUs must now comply with duplicative administrative requirements (e.g., permitting, reporting) for the 2009 ozone season and beyond until the provisions of the NO_x Trading Program are sunsetted; namely, the duplicative requirements that appear in Part 217. Subpart W. To address and remove this duplication, this proposal for sunseting the provisions of the NO_x Trading Program is consistent with the provisions of 40 CFR 51.123(bb)(1)(i), which provide that states with approved CAIR programs may revise their applicable SIP so that the provisions of the NO_x SIP Call Trading Program do not apply to affected EGUs.

II. GEOGRAPHIC REGIONS AND SOURCES AFFECTED

The entire State of Illinois was subject to the NO_x SIP Call and is now subject to CAIR. The proposed regulations will affect existing EGUs. There are approximately 229 existing EGUs that are currently subject to the NO_x SIP Call Trading Program. For the NO_x SIP Call Trading Program, existing units are those that commenced operation before May 1, 2006. Of these units, 170 are gas and oil fired boilers, 59 are coal-fired boilers, and the remainder are gas and oil-fired combustion turbines.

III. PURPOSE AND EFFECT OF THE PROPOSAL

The purpose of this proposal is to sunset the provisions of Part 217.Subpart W beginning with the 2009 control period, consistent with the CAIR rule adopted by the Board in Part 225. The CAIR rule replaces the NO_x SIP Call Trading Program with a program that contains both a NO_x emissions annual and an ozone season trading program. The Illinois EPA is proposing to sunset any requirements related to the NO_x SIP Call Trading Program after the 2008 control period as set forth in Subpart W beginning with the 2009 control period and thereafter. The provisions will remain in effect for violations that occurred in control periods prior to 2009.

In this case, the rule is being proposed to prevent a burden and replaces a rule that is no longer being implemented by USEPA. The adoption of the proposal will not result in injury or substantial prejudice, nor an abrupt departure from a well established practice. Hence, adoption of this proposal is appropriate to prevent a burden on affected EGUs.

IV. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

The amendments to Part 217.Subpart W are being proposed to ensure consistency with the CAIR ozone season program and prevent EGUs from being subject to duplicative monitoring, reporting, permitting and recordkeeping requirements. USEPA has stopped allocating NO_x allowances for the NO_x SIP Call Trading Program. As this proposal sunsets regulatory provisions, it would impose no new requirements or costs on affected sources. Hence, the proposal is both technically and economically feasible.

V. COMMUNICATION WITH INTERESTED PARTIES

These amendments are being proposed after representatives of industry and environmental groups have had an opportunity to review the proposed changes and provide comments to the Illinois EPA. The Illinois EPA sent electronic mails to the affected EGUs on March 19, 2009, and received one comment on an issue that will not be directly affected by the

proposal, i.e., the disposition of remainder NO_x SIP Call Trading Program allowances. *See*, Exhibits A and B. Therefore, it is the Illinois EPA's understanding that there are no significant issues identified by interested parties.

VI. THE ILLINOIS EPA'S PROPOSAL

**35 Ill. Adm. Code 217: SUBPART W: NO_x TRADING PROGRAM
FOR ELECTRICAL GENERATING UNITS**

Section 217.751 Sunset Provisions

Illinois EPA is proposing to sunset the provisions of Subpart W beginning with the 2009 control period and any requirements related to the NO_x SIP Call Trading Program after the 2008 control period. The provisions will remain in effect for violations that occurred in control periods prior to 2009.

VII. CONCLUSION

For the reasons stated above, the Illinois EPA hereby submits this regulatory proposal and respectfully requests that the Board expeditiously adopts these rules for the State of Illinois.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Rachel L. Doctors

Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: April 21, 2009
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
217.782.5544

Doctors, Rachel

From: Kaleel, Rob
Sent: Thursday, March 19, 2009 5:05 PM
To: Doctors, Rachel
Subject: FW: Rulemaking Proposal to Sunset the NOx SIP Call for EGUs
Attachments: Sec217_751.pdf

Here's the first email...

From: Kaleel, Rob
Sent: Monday, March 16, 2009 4:59 PM
To: (abigail.rector@exeloncorp.com); (arnold.jenkinsjr@duke-energy.com); (bill.murray@cwlp.com); (bruceparker@electricenergyinc.com); (Bsteinhauser@ipr-us.com); (CJ.Saladino@dom.com); (cjacobsen@tenaska.com); (dale.davis@exeloncorp.com); (dave.farris@cwlp.com); (dfcole@ameren.com); (dfurstenwerth@reliant.com); (Diane.Leopold@dom.com); (djmurphy@pplweb.com); (gkunkel@tenaska.com); (glenn.calloway@calpine.com); (Glenn.P.Johnson@dom.com); (james.eiseman@dynegy.com); (james.r.kipp@dynegy.com); (jason.goodwin@calpine.com); (jim.idzorek@nrgenergy.com); (jmclaurin@sipower.org); (Joseph.C.Wood@dom.com); (jrtaylor@cordovaenergy.com); (jshimshock@reliant.com); (kirk.millis@dynegy.com); (kjanderson@ameren.com); (laboyer@pplweb.com); (Larry.Waite@dynegy.com); (lcarlson@tenaska.com); (lhopkins@sipower.org); (Lonnie.A.Grote@dynegy.com); (mcgriggs@duke-energy.com); (mlmenne@ameren.com); (pcgrigsby@duke-energy.com); (pj.becker@cwlp.com); (randy.specht@exeloncorp.com); (rfisher@ppi.coop); (robert_crowe@dynegy.com); (roger.stegeman@sweci.com); (russel.gilbert@sweci.com); (schy.willmore@cwlp.com); (smiller@mwgen.com); (sphart@cordovaenergy.com); (stan_sander@dynegy.com); (ted_lindenbusch@dynegy.com); (terrylarbes@electricenergyinc.com); (timothy.kelley@dynegy.com); (tjonas@tenaska.com); (vbrisini@reliant.com); (wendell_watson@dynegy.com); Asplund, Bob; Bassi, Kathleen; Kolaz, Dave
Subject: Rulemaking Proposal to Sunset the NOx SIP Call for EGUs

Attention CAIR Contacts:

The Agency intends to submit the attached proposal to the Illinois Pollution Control Board in the next few weeks with a request to expedite the rulemaking. The intent of this proposal is to sunset the provisions of the NOx SIP Call (Subpart W) affecting electric generating units, as these provisions have been superseded by Illinois' CAIR rule. We don't believe this proposal is controversial so we will not initiate a formal outreach process before we submit this to the Board. Please let me know if you have any questions or concerns.

Rob Kaleel
 Air Quality Planning
 Bureau of Air

Doctors, Rachel

From: Kaleel, Rob
Sent: Thursday, March 19, 2009 5:05 PM
To: aroyden-bloom@4cleanair.org; Baker, David; Bakowski, Ed; Barnes, Donald; Beck, AJ; Bialeki, George; Biel, Mark ; Bloomberg, David E.; Bowles, Ryan; Brennan, Jessica; Bressen, Craig; Brown, RB; Bugel, Faith; Choi, J; Churchill, Merle; Clayborn, Becki; Coe, Tom; Constantelos, Bill; Crescent Ridge Wind; Culick, Martin; Cumbow, Jim; Darrin, Jack; Davis, Rory; Deacon, Mac; Depp, Caroline; Dierick, Rick; Doctors, Rachel; Drenner, Lou; Dwyer, David; Dypold, Dirk; Earl, Ronald ; Evans, Patrick ; Fabian, Bill; Farren, Brenda; Fisher, Randy; Freestone, Maryl; Haas, William; Hardt, Peter; Harrington, Jim; Haun, Jeff; Helm, Jim ; Hirner, DK; Hodge, Kathy; Holston, Erik; ilika, anita; Illinois Clean Energy Foundation; Illinois Landfill Gas Coalition; Illinois Manufacturers Association; Illinois Solar; Irwin, Barb; Jenkins, Arnold; Johnson, Mike; Jones, Doug; Jouras, Mike; Kaleel, Rob; Kaleel, Rob; Kanczuzewski, TJ; Kruse, Andy; Learner, Howard; Leavit, Brandon; Loll, Brian; Mader, Kelly; Matoesian, Charles; Matty, Robert; McFarlan, Doug; McGuire, W.F.; McInnis, Michael; Monk, Jim; Morgenstern, Roger; Nathan, Ernie; Nilles, Bruce; O'Keefe, Mary Eileen; Olsen, Erik; O'Shea, Kevin; Owen, Verena; Parker, James; Pike County Wind; Pilapil, Ray; prohov, rick; Romo, Bob; Rosenbaum, David; Ross, Jim; Ruhl, Jeffery; Sanch, Robert; Schneider, Jim ; Sims, Jackie; Snider, Donald; Stanch, Michael; Stanfield, Becky; Swarupa Ganguli; Tickner, Diana; Vogl, Bob; Wanninger, Kent; Weis, John; Wells, Bob; Wheatley, D. Blake; White, Jason; Whitlock, Bill; Whitworth, Steve; Wilkerson, Mark; Wind Mail
Subject: Rulemaking Proposal to Sunset the NOx SIP Call for EGUs
Attachments: Sec217_751.pdf

Attention CAIR Contacts:

My apologies to those of you who are receiving this message a second time. My first email apparently didn't reach everyone. The Agency intends to submit the attached proposal to the Illinois Pollution Control Board in the next few weeks with a request to expedite the rulemaking. The intent of this proposal is to sunset the provisions of the NOx SIP Call (Subpart W) affecting electric generating units, as these provisions have been superseded by Illinois' CAIR rule. We don't believe this proposal is controversial so we will not initiate a formal outreach process before we submit this to the Board. Please let me know if you have any questions or concerns.

Rob Kaleel
Air Quality Planning
Bureau of Air

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: Amendments to 35 Ill. Adm. Code Part 217
- 3) Section Numbers: Proposed Action:
217.751 Add
- 4) Statutory Authority: Implementing and authorized by Sections 10 and 27 of the Illinois Environmental Protection Act [415 ILCS 5/10 and 27].
- 5) A Complete Description of the Subjects and Issues Involved: This proposal will add a provision sunsetting the NO_x SIP Call requirements as set forth in Subpart W that apply to electric generating units ("EGUs") and that have been superseded by the requirements for the Clean Air Interstate Rule ("CAIR") as set forth in Part 225. Beginning with the 2009 control period (May1 through September 30) and thereafter, Subpart E of Part 225 provides for the control of nitrogen oxides ("NO_x") emissions from EGUs through the implementation of an interstate trading program. The trading program in Subpart E of Part 225 supersedes the interstate NO_x Trading Program that is set forth in Subpart W of Part 217 for EGUs.
- 6) Will this proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
217.386	Amend	32 Ill. Reg. 17075
217.388	Amend	32 Ill. Reg. 17075
217.390	Amend	32 Ill. Reg. 17075
217.392	Amend	32 Ill. Reg. 17075
217.394	Amend	32 Ill. Reg. 17075
217.396	Amend	32 Ill. Reg. 17075

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3].

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of forty-five (45) days after the date of publication in the Illinois Register. Comments should reference Docket R09- and be addressed to:

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

and

Rachel L. Doctors
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
217-782-5544

- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any small businesses, small municipalities, or not-for-profit corporations that are subject to the NO_x Trading Program could be affected by the proposed amendments.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: None
- 13) This rulemaking was not included on either of the two most recent regulatory agendas because: This rulemaking was not included in either of the two most recent regulatory agendas because of the uncertainty associated with the CAIR Trading program that was adopted to replace the one that is the subject of this proposal. On July 11, 2008, the United States Court of Appeals vacated the CAIR rule in its entirety and remanded the rule back to USEPA for revision. *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008). The court stated that pending the remand of the CAIR program that the provisions of the NO_x SIP Call Trading Program would remain in place. However, the same petitioners then requested that the rule be reinstated during the remand. On December

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NOTICE OF PROPOSED AMENDMENTS

23, 2008, the court granted the rehearing and unvacated. *North Carolina v. USEPA*, 550 F.3d 1176 (C.A.D.C. Cir. 2008). Therefore, pending the remand, the original CAIR as adopted at 35 Ill. Adm. Code Part 225, is in effect.

- 14) Does this amendment require the review of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? [30 ILCS 500/5-25] No

The full text of the Proposed Amendment(s) begins on the next page:

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS
FOR STATIONARY SOURCES

PART 217
NITROGEN OXIDES EMISSIONS
SUBPART A: GENERAL PROVISIONS

Section
217.100 Scope and Organization
217.101 Measurement Methods
217.102 Abbreviations and Units
217.103 Definitions
217.104 Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section
217.121 New Emission Sources

SUBPART C: EXISTING FUEL COMBUSTION EMISSION SOURCES

Section
217.141 Existing Emission Sources in Major Metropolitan Areas

SUBPART K: PROCESS EMISSION SOURCES

Section
217.301 Industrial Processes

SUBPART O: CHEMICAL MANUFACTURE

Section
217.381 Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION
ENGINES AND TURBINES

Section
217.386 Applicability
217.388 Control and Maintenance Requirements
217.390 Emissions Averaging Plans

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENTS

217.392 Compliance
217.394 Testing and Monitoring
217.396 Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

Section
217.400 Applicability
217.402 Control Requirements
217.404 Testing
217.406 Monitoring
217.408 Reporting
217.410 Recordkeeping

SUBPART U: NO_x CONTROL AND TRADING PROGRAM FOR
SPECIFIED NO_x GENERATING UNITS

Section
217.450 Purpose
217.452 Severability
217.454 Applicability
217.456 Compliance Requirements
217.458 Permitting Requirements
217.460 Subpart U NO_x Trading Budget
217.462 Methodology for Obtaining NO_x Allocations
217.464 Methodology for Determining NO_x Allowances from the New Source Set-Aside
217.466 NO_x Allocations Procedure for Subpart U Budget Units
217.468 New Source Set-Asides for "New" Budget Units
217.470 Early Reduction Credits (ERCs) for Budget Units
217.472 Low-Emitter Requirements
217.474 Opt-In Units
217.476 Opt-In Process
217.478 Opt-In Budget Units: Withdrawal from NO_x Trading Program
217.480 Opt-In Units: Change in Regulatory Status
217.482 Allowance Allocations to Opt-In Budget Units

SUBPART V: ELECTRIC POWER GENERATION

Section
217.521 Lake of Egypt Power Plant
217.700 Purpose
217.702 Severability

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NOTICE OF PROPOSED AMENDMENTS

217.704	Applicability
217.706	Emission Limitations
217.708	NO _x Averaging
217.710	Monitoring
217.712	Reporting and Recordkeeping

SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL
GENERATING UNITS

Section	
217.750	Purpose
<u>217.751</u>	<u>Sunset Provisions</u>
217.752	Severability
217.754	Applicability
217.756	Compliance Requirements
217.758	Permitting Requirements
217.760	NO _x Trading Budget
217.762	Methodology for Calculating NO _x Allocations for Budget Electrical Generating Units (EGUs)
217.764	NO _x Allocations for Budget EGUs
217.768	New Source Set-Asides for "New" Budget EGUs
217.770	Early Reduction Credits for Budget EGUs
217.774	Opt-In Units
217.776	Opt-In Process
217.778	Budget Opt-In Units: Withdrawal from NO _x Trading Program
217.780	Opt-In Units: Change in Regulatory Status
217.782	Allowance Allocations to Budget Opt-In Units

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Section	
217.800	Purpose
217.805	Emission Unit Eligibility
217.810	Participation Requirements
217.815	NO _x Emission Reductions and the Subpart X NO _x Trading Budget
217.820	Baseline Emissions Determination
217.825	Calculation of Creditable NO _x Emission Reductions
217.830	Limitations on NO _x Emission Reductions
217.835	NO _x Emission Reduction Proposal
217.840	Agency Action
217.845	Emissions Determination Methods

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NOTICE OF PROPOSED AMENDMENTS

217.850 Emissions Monitoring
217.855 Reporting
217.860 Recordkeeping
217.865 Enforcement

APPENDIX A Rule into Section Table
APPENDIX B Section into Rule Table
APPENDIX C Compliance Dates
APPENDIX D Non-Electrical Generating Units
APPENDIX E Large Non-Electrical Generating Units
APPENDIX F Allowances for Electrical Generating Units
APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NO_x SIP Call

Authority: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].

Source: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14254, effective September 25, 2007; amended in R09- at Ill. Reg. _____, effective _____.

SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL
GENERATING UNITS

Section 217.751 Sunset Provisions

The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at ____ Ill. Reg. _____, effective _____)

Synopsis of Testimony

Yoginder Mahajan, Environmental Protection Engineer, Air Quality Planning Section, Bureau of Air, Illinois EPA. Mr. Mahajan will address the following:

- The NOx SIP Call NOx Trading Program for Electrical Generating Units in 35 Ill. Adm. Code Subpart W has been replaced by CAIR Ozone Season NOx Trading, Subpart E of 35 Ill. Adm. Code 225. The proposal provides that the provisions of Subpart W shall not apply for any control period in 2009 or after. However, the provisions of Subpart W will remain in place for non-compliance in control periods prior to 2009.
- The two trading programs contain duplicate NOx emissions monitoring, reporting, and record keeping provisions. Adoption of the proposal will eliminate the duplication.
- As this proposal does not add additional requirements, but removes duplicative provisions, no adverse technological and economic impacts are anticipated.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM SUNSET) **R09-**
PROVISIONS FOR ELECTRIC) **(Rulemaking - Air)**
GENERATING UNITS:)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217.SUBPART W)

MOTION FOR EXPEDITED REVIEW

NOW COMES Proponent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 101.512, respectfully submits this Motion for Expedited Review (“Motion”). In support of its Motion, the Illinois EPA states as follows:

1. Subpart W of Part 217 was adopted by the Board on December 21, 2000. On November 8, 2001, this Subpart received approval by the United States Environmental Protection Agency (“USEPA”). 66 *Fed. Reg.* 56454. Subpart W regulates nitrogen oxides (“NO_x”) emissions from utility boilers, or electric generation units (“EGUs”). The State of Illinois was required to regulate these sources pursuant to USEPA’s NO_x SIP Call. 63 *Fed. Reg.* 57356 (October 27, 1998).

2. On May 12, 2005, USEPA promulgated the Clean Air Interstate Rule (“CAIR”) with the purpose of replacing the NO_x SIP Call Trading Program beginning with the 2009 control period. *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to Acid Rain Program; Revisions to the NO_x SIP Call*, 70 *Fed. Reg.* 25162 (May 12, 2005). Provisions implementing CAIR in Illinois were adopted by the Board in 35 Ill. Adm. Code 225 (R06-22) and approved by USEPA on October 16, 2007. 72 *Fed. Reg.* 58528. The CAIR provisions as set forth in Part 225.Subpart E include a trading program for control of NO_x

emissions during the ozone season that replaces the provisions in Part 217.Subpart W for EGUs beginning with the 2009 control period (May 1 through September 30) and thereafter.

3. This proposal for sunseting Subpart W was not put forward with the CAIR rulemaking because while the State regulatory process was pending, the federal CAIR rule was the subject of court review. On July 11, 2008, the United States Court of Appeals vacated the CAIR rule in its entirety and remanded the rule back to USEPA for revision and left the provisions of the NO_x SIP Call Trading Program in place. *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008).

4. The same parties in *North Carolina*, then, petitioned for rehearing on the court's decision to vacate and requested that the CAIR rule be reinstated during the remand. On December 23, 2008, the court unvacated CAIR with implementation to begin with the original control period in 2009. *North Carolina v. USEPA*, 550 F.3d 1176 (C.A.D.C. Cir. 2008).

5. With the reinstatement of the CAIR program, Illinois' EGUs must now comply with duplicative administrative requirements (e.g., permitting, reporting) for the 2009 ozone season and beyond until the provisions of the NO_x Trading Program are sunsetted; namely, the duplicative requirements that appear in Part 217.Subpart W.

6. For the reasons stated above, and due to the impending 2009 ozone season control period (May 1, 2009, through September 30, 2009), the regulations need to be adopted in an expedited manner.

7. In light of the foregoing, it is necessary to expedite review in this matter.

8. Therefore, the Illinois EPA requests that the Board proceed to First Notice under the Illinois Administrative Procedure Act, 5 ILCS 100/1-1 *et seq.*, without reaching a decision on

its merits, by accepting the regulatory language proposed by the Illinois EPA in this rulemaking proposal for purposes of First Notice.

9. The Illinois EPA also request that the requisite public hearings be scheduled as soon as possible in accordance with Section 28(a) of the Illinois Environmental Protection Act, 415 ILCS 5/28(a).

10. The Illinois EPA believes that the Board possesses the information necessary to proceed to First Notice in this rulemaking and to schedule a public hearing is contained in the Statement of Reasons. If more information is needed, the Illinois EPA will fully cooperate to expeditiously provide the same to the Board and its hearing officer.

11. As required by 35 Ill. Adm. Code Section 101.512, this Motion is accompanied by an Affirmation attesting that the facts cited herein are true.

WHEREFORE, for the reasons set forth above, the Illinois EPA respectfully requests that the Board grant its Motion and expedite review in this matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Rachel L. Doctors
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: April 21, 2009
1021 North Grand Avenue, East
P.O. Box 19276
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
NO_x TRADING PROGRAM SUNSET)	R09-
PROVISIONS FOR ELECTRIC)	(Rulemaking - Air)
GENERATING UNITS:)	
AMENDMENTS TO 35 ILL.)	
ADM. CODE PART 217.SUBPART W)	

AFFIRMATION

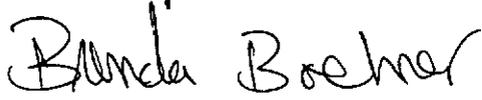
I, Rachel L. Doctors, under other, hereby state and affirm that I am an Assistant Counsel for Illinois EPA and the facts cited in the foregoing Motion for Expedited Review are true and correct to the best of my information and belief.



Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

SUBSCRIBED AND SWORN TO BEFORE ME

This 21ST day of April, 2009



Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached REGULATORY PROPOSAL FOR NO_x TRADING PROGRAM SUNSET PROVISIONS FOR ELECTRIC GENERATION UNITS ("EGUs"); AMEDMETNS TO 35 ILL. ADM. CODE PART 217.SUBPART W, APPERANCE, MOTION TO EXPEDITE AND AFFIRMATION of the Illinois Environmental Protection Agency upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Matthew Dunn, Chief
Division of Environmental Enforcement
Office of the Attorney General
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ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

/s/ Rachel L. Doctors

Rachel L. Doctors
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