



TESTIMONY OF DAVID E. BLOOMBERG

Good afternoon. My name is David E. Bloomberg. I am employed by the Illinois Environmental Protection Agency (Illinois EPA) as the Compliance Unit Manager in the Compliance Section within the Division of Air Pollution Control. I have been at the Agency in this capacity for over five years, and was previously an Environmental Protection Engineer in the Air Quality Planning Section for twelve and a half years. My academic credentials include a Bachelor of Science degree in ceramic engineering from the University of Illinois at Champaign-Urbana, as well as completion of all graduate coursework required for a Master's degree in the same field.

I have also completed numerous environmental courses over the years and provided training on air pollution compliance issues to industry personnel and environmental consultants.

Among my other duties, I supervised Illinois' portion of the now-defunct NOx trading program run under the NOx SIP Call, as well as supervising Illinois' portion of the current Clean Air Interstate Rule (CAIR) NOx trading program. Both of these programs involved determining or approving the determination of which sources are eligible to receive certain types of allowances, such as early reduction credits and new source set-asides; determining or approving the determination of apportionment of allowances given to such sources or to other sources eligible to receive allowances; collecting or overseeing the collection of monies for sales of certain NOx allowances; informing U.S. EPA how to distribute NOx allowances to Illinois sources; serving as the designated account representative for the State of Illinois; answering questions concerning the Illinois NOx rules; and related tasks.

In addition, as manager of the Compliance Unit, I approve Agency reviews of emissions and monitor testing conducted for sources subject to NOx regulations, participate in decisions regarding enforcement of the Board's air pollution regulations, interface with U.S. EPA regarding their enforcement cases in Illinois, and oversee the process of sending out Violation Notices and related activities.

In my almost 18 years with the Illinois EPA, I have been involved in designing, writing, implementing, and enforcing a wide variety of air pollution regulations, including those for NOx trading, CAIR, mercury, the Emissions Reduction Market System (ERMS), and several industry-specific rules.

I am here today to provide testimony regarding questions that arose during the first hearing on this matter. While the issue of distribution of allowances goes beyond the intended scope of this rulemaking, this testimony is given for background purposes at the request of the Board.

The first question addressed whether the last truly applicable provisions of Subpart W occurred at the end of the 2008 ozone season. The answer to this is yes, if this rulemaking goes through. With CAIR replacing the NOx SIP Call trading program, there are no more NOx SIP Call allowances and thus no requirements relating to such. However, there are recordkeeping and reporting requirements which would be duplicative and potentially contradictory with CAIR requirements for affected sources, which is a major reason the Agency has proposed this sunset rulemaking.

The second question asked whether the Agency would know today or within a short time period whether or not there have been violations under Subpart W. The answer is no, there is no guarantee the Agency would know in a short time period whether or not there were violations. Sometimes, it may take several years to determine that such a violation took place. For example, in one such case, an emissions test had been completed incorrectly but the problems were not determined for two or three years. Once they were, the source's NO<sub>x</sub> emissions for the past several years had to be recalculated, causing the source to be in noncompliance with the NO<sub>x</sub> SIP Call trading program for those previous years. At least one other case similarly involved noncompliance that was discovered two or more years after the NO<sub>x</sub> allowances should have been provided. As such, it is necessary to retain the regulation in order to preserve the ability to enforce these regulations, should situations arise where it becomes necessary. In my experience, this is a fairly standard practice when revising air pollution regulations, and I have been involved in several such rulemakings where regulations were changed but older versions of the regulations were maintained on the books for precisely this purpose.

Another question asked whether all allowances that have been provided to Illinois under the NO<sub>x</sub> SIP Call program been distributed to EGUs. The answer to that is no, because the current regulations do not provide for such distribution. The correct number of allowances greater than 3% of the New Source Set-Aside (NSSA) is in the process of being distributed to EGUs, pursuant to Sections 217.764 and 217.768. However, that is the only pertinent distribution provided for under these regulations. As such, this also answers another question, which is when the other allowances will be distributed – they will not, until and unless the Agency makes a decision to do so and a new regulation is passed by the Board to provide for such. However, the Agency is not seeking authority to distribute such allowances at this time and, as noted previously, such allowance distribution falls outside the scope of this rulemaking.

The same answer also applies to the final question that was raised, asking if there are other allowances falling outside the umbrella of those already described. There are some other allowances that reside in Illinois' account for which no distribution is currently planned. Some of these are from the non-EGU trading budget under Part 217.Subpart U , some are for allowances that were part of some other distribution but were left over due to rounding when allocating on a pro-rata basis. These allowances would presumably be addressed in the same manner as described earlier.

Finally, the Board sought verification that NO<sub>x</sub> SIP Call allowances became CAIR allowances, and the answer to that is yes, that is indeed correct.

I am now available to answer other questions pertaining to this rulemaking.

STATE OF ILLINOIS                    )  
  )  
COUNTY OF SANGAMON                )  
  )

SS

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached TESTIMONY OF DAVID E. BLOOMBERG of the Illinois Environmental Protection Agency upon the following persons:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

Matthew Dunn, Chief  
Attorney General's Office  
James R. Thompson Center  
100 West Randolph, 12th Floor  
Chicago, Illinois 60601

Kathleen Crowley, Hearing Officer  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

Virginia Yang  
Deputy Legal Counsel  
Illinois Dept. of Natural Resources  
524 South Second Street  
Springfield, Illinois 62701-1787

SEE ATTACHED SERVICE LIST

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

\_\_\_\_\_/s/  
Rachel L. Doctors  
Assistant Counsel  
Air Regulatory Unit  
Division of Legal Counsel

Dated: July 10, 2009  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
(217) 782-5544  
217.782.9143 (TDD)

SERVICE LIST

Alec M. Davis  
Illinois Environmental Regulatory Group  
3150 Roland Ave  
Springfield, IL 62705-5776

Katherine D. Hodge  
Hodge Dwyer & Driver  
3150 Roland Ave., PO Box 5776  
Springfield, IL 62705-5776

Kathleen C. Bassi  
Schiff Hardin, LLP  
6600 Sears Tower  
233 S. Wacker Drive  
Chicago, IL 60606-6473

Monica T. Rios  
Hodge Dwyer & Driver  
3150 Roland Ave., PO Box 5776  
Springfield, IL 62705-5776