

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM SUNSET) **R11-**
PROVISIONS FOR NON-ELECTRIC) **(Rulemaking - Air)**
GENERATING UNITS:)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217.SUBPART U)

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 - *c. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x 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)
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- *f. *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008)
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9. Certificate of Service

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

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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 U. This proposal amends the most recent version of Part 217.Subpart U as found on the Board's website.

I. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S PROPOSAL

a. Background – The NO_x Trading Program

Subpart U of Part 217 was adopted by the Board on March 1, 2001. 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. See, 66 *Fed. Reg.* 56449. Subpart U regulates nitrogen oxides (“NO_x”) emissions from industrial boilers, or non-electric generation units (“Non-EGUs”). Illinois was required to regulate these sources pursuant to USEPA’s NO_x SIP Call. 63 *Fed. Reg.* 57356 (October 27, 1998). Subpart U implemented the NO_x Trading Program for Non-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 Non-EGUs. The emissions reductions helped the two ozone nonattainment areas in Illinois attain the (1997) 8-hour ozone National Ambient Air Quality Standard ("NAAQS").

b. The Clean Air Interstate Rule ("CAIR")

On May 12, 2005, the Clean Air Interstate Rule ("CAIR") was adopted to replace the NO_x SIP Call Trading Program (ozone season NO_x trading program) beginning with the 2009 control period and to add two new trading programs that address 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 for utility boilers ("EGUs") in Illinois were adopted by the Board in 35 Ill. Adm. Code 225 (R06-26) and approved by USEPA on October 16, 2007. 72 *Fed. Reg.* 58528.

While the State regulatory process for EGUs 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 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 of the CAIR, along with USEPA, then petitioned for rehearing on the court's decision to vacate and requested that the CAIR trading programs 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' Non-EGUs are no longer required to comply with the NO_x SIP Call requirements for holding NO_x allowances, but Illinois is still required to demonstrate that it is meeting the NO_x budget for this group of units. (Att. A – Letter from USEPA, dated September 24, 2009). To ensure that the NO_x budget requirement is still met, sources must continue monitoring, reporting and keeping records as required by Subpart U. USEPA has indicated that as it is no longer allocating allowances for the NO_x SIP Call, Non-EGUs no longer have the requirement of holding allowances to equal to their emissions for any control period after 2008. Hence, the requirements in Subpart U that require the holding of NO_x allowances is now moot for the 2010 ozone season. Retaining such requirements as a regulatory requirement for future control periods raises the specter of unenforceable requirements and leads to confusion as to the applicable requirements. Until the provisions of Subpart U that pertain to the holding and trading of NO_x allowances under the NO_x Trading Program are sunsetted, this confusion will remain. To address this issue, the proposal sunsets the trading provisions of the NO_x Trading Program in Subpart U.

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 CAIR regulations will affect existing EGUs. There are approximately 52 existing Non-EGUs and two are new non-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 52 non-EGU, four units are no longer operating. (Att. B).

III. PURPOSE AND EFFECT OF THE PROPOSAL

The purpose of this proposal is to sunset the trading provisions of Part 217.Subpart U beginning with the 2010 control period and to retain the requirements necessary to show compliance with the Non-EGU NO_x Budget. USEPA replaced the NO_x SIP Call Trading Program with the CAIR program and is no longer administering the former. The Illinois EPA is proposing to sunset any requirements related to the trading portion of allowances under the NO_x SIP Call Trading Program as set forth in Subpart U beginning with the 2009 control period and continuing 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 confusion and deletes requirements for a program that is no longer being administered 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 clarify the applicable requirements for affected Non-EGUs.

IV. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

The amendments to Part 217.Subpart U are being proposed to clarify the applicable requirements, e.g., monitoring, reporting, and recordkeeping requirements, and delete obsolete requirements, e.g., holding of NO_x allowances and permitting. USEPA has stopped allocating NO_x allowances for the NO_x SIP Call Trading Program. As this proposal sunsets certain regulatory provisions, it would impose no new requirements or

costs on affected sources and eliminates obsolete requirements. Hence, the proposal is both technically and economically feasible.

V. COMMUNICATION WITH INTERESTED PARTIES

These amendments are being proposed after multiple discussions with the Illinois Environmental Regulatory Group (“IERG”). Most recently, IERG was notified by electronic mail that the Illinois EPA intended to file this proposal. It is the Illinois EPA’s belief that there are no significant issues identified by interested parties.

VI. SYNOPSIS OF TESTIMONY

Currently, the Illinois EPA plans to call Yoginder Mahajan, Environmental Protection Engineer, Air Quality Planning Section, Bureau of Air, and Robert Kaleel, Manager, Air Quality Planning Section, Bureau of Air. They will testify about the amendments to the rules and will assist in answering question. Written testimony will be submitted prior to hearing in accordance with the Board’s procedural rules.

VII. THE ILLINOIS EPA’S PROPOSAL

35 Ill. Adm. Code 217: NO_x CONTROL AND TRADING PROGRAM FOR SPECIFIED NO_x GENERATING UNITS

Section 217.451 Sunset Provisions

The Illinois EPA is proposing to sunset the trading provisions of Subpart U beginning with the 2009 control period and retain the emissions monitoring, reporting and recordkeeping requirements, among other requirements, of the NO_x SIP Call Trading Program.

Section 217.456 Compliance Requirements

The Illinois EPA is proposing to delete the requirement in subsection (e)(2) to submit a compliance certificate.

VIII. 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: _____

Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED:

1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

**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. \$0. The Agency does not devote resources to this activity since the affected sources have not been included in the federal NOx trading program since the 2008 ozone season.
 - (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.
 - (c) Indicate the funding source, including Fund and appropriation lines, for this program/activity.
 - (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.
 - (e) Will this rulemaking have any effect on State revenues or expenditures not already indicated above?

2. Economic effect on persons affected by the rulemaking:
 - (a) Indicate the economic effect and specify the persons affected:
Positive ___ Negative ___ No effect X
Persons affected: Owners and operators of Non-electric generating units subject to the requirements of 35 Ill. Adm. Code 217.Subpart U.
Dollar amount per person: ___
Total statewide cost: _____
 - (b) If an economic effect is predicted, please briefly describe how the effect will occur.

- (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.

- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: Amendments to 35 Ill. Adm. Code Part 217
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
217.451	Add
217.456	Amend
- 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 U that apply to Non-electric generating units ("Non-EGUs"). Beginning with the 2009 control period (May1 through September 30), Non-EGUs will no longer be required to hold NO_x allowances in an amount equal to their seasonal NO_x emissions. Such sources will continue to be required to monitor, record and report seasonal NO_x emissions.
- 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? No
- 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].
- 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 R11- 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 for Non-EGUs 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 included on either of the two most recent regulatory agendas because: 34 Ill. Reg. 8696, July 2, 2010.
- 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:

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 (Repealed)

SUBPART C: EXISTING FUEL COMBUSTION EMISSION UNITS

Section	
217.141	Existing Emission Units in Major Metropolitan Areas

SUBPART D: NO_x GENERAL REQUIREMENTS

Section	
217.150	Applicability
217.152	Compliance Date
217.154	Performance Testing
217.155	Initial Compliance Certification
217.156	Recordkeeping and Reporting
217.157	Testing and Monitoring
217.158	Emissions Averaging Plans

SUBPART E: INDUSTRIAL BOILERS

Section	
217.160	Applicability
217.162	Exemptions
217.164	Emissions Limitations
217.165	Combination of Fuels

217.166 Methods and Procedures for Combustion Tuning

SUBPART F: PROCESS HEATERS

Section

217.180 Applicability
217.182 Exemptions
217.184 Emissions Limitations
217.185 Combination of Fuels
217.186 Methods and Procedures for Combustion Tuning

SUBPART G: GLASS MELTING FURNANCES

Section

217.200 Applicability
217.202 Exemptions
217.204 Emissions Limitations

SUBPART H: CEMENT AND LIME KILNS

Section

217.220 Applicability
217.222 Exemptions
217.224 Emissions Limitations

SUBPART I: IRON AND STEEL AND ALUMINUM MANUFACTURING

Section

217.240 Applicability
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SUBPART K: PROCESS EMISSION SOURCES

Section

217.301 Industrial Processes

SUBPART M: ELECTRICAL GENERATING UNITS

Section

217.340 Applicability
217.342 Exemptions
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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
217.392 Compliance
217.394 Testing and Monitoring
217.396 Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

Section
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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
217.451 Sunset Provisions
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
217.704 Applicability
217.706 Emission Limitations
217.708 NO_x Averaging
217.710 Monitoring
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SUBPART W: NO_x TRADING PROGRAM FOR
ELECTRICAL GENERATING UNITS

Section

217.750 Purpose
217.751 Sunset Provisions
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
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217.768 New Source Set-Asides for "New" Budget EGUs
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217.778 Budget Opt-In Units: Withdrawal from NO_x Trading Program
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SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

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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
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- 217.835 NO_x Emission Reduction Proposal
- 217.840 Agency Action
- 217.845 Emissions Determination Methods
- 217.850 Emissions Monitoring
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- 217.APPENDIX A Rule into Section Table
- 217.APPENDIX B Section into Rule Table
- 217.APPENDIX C Compliance Dates
- 217.APPENDIX D Non-Electrical Generating Units
- 217.APPENDIX E Large Non-Electrical Generating Units
- 217.APPENDIX F Allowances for Electrical Generating Units
- 217.APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NO_x SIP Call
- 217.APPENDIX H Compliance Dates for Certain Emissions Units at Petroleum Refineries

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 R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009; amended in R09-20 at 33 Ill. Reg. 15754, effective November 2, 2009; amended in R11-___ at _____ Ill. Reg. _____, effective _____.

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

Section 217.451 Sunset Provisions

Except for Sections 217.452 (Severability), 217.454 (Applicability), and 217.456(a), (c), (e)(1)(B) through (D), and (e)(2) (Monitoring, and Recordkeeping and Reporting), the provisions of this Subpart U shall not apply for any control period in 2009 or thereafter. Compliance for 2009 and after is required for the Section listed above. 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 _____)

Section 217.456 Compliance Requirements

All budget units subject to the requirements of this Subpart must comply with the following:

- a) The requirements of this Subpart and 40 CFR 96, excluding 40 CFR 96.4(b), 96.55(c) and subparts C, E, and I, as incorporated by reference in Section 217.104 of this Part. To the extent that this Subpart contains provisions which are inconsistent with any provisions of 40 CFR 96, the owner or operator of budget units subject to this Subpart shall comply with the provisions of this Subpart in lieu of those provisions which were incorporated by reference.
- b) Budget permit requirements:
 - 1) The owner or operator of each source with one or more budget units at the source subject to this Subpart must submit a complete permit application for a budget permit in accordance with the provisions of Section 217.458(a)(4), (a)(5) or (a)(6), as applicable, to be issued by the Agency with federally enforceable conditions covering the NO_x Trading Program (budget permit), and that complies with the requirements of Section 217.458 of this Subpart.
 - 2) The owner or operator of one or more budget units subject to this Subpart must operate each such budget unit in compliance with such budget permit or complete budget permit application, as applicable.
 - 3) The owner or operator of one or more budget units subject to this Subpart, at the time of filing an application for a permit under this Section, must submit a complete application for either a permit incorporating a source-wide overdraft account (as such term is defined in 40 CFR 96.2), or a permit incorporating unit specific compliance accounts for each budget unit at the source subject to this Subpart. Such election shall be at the sole discretion of the owner or operator of the source and the Agency shall incorporate such election into a permit issued to the source pursuant to this Subpart.
- c) Monitoring requirements:
 - 1) For budget units subject to the requirements of this Subpart, and which commence operation on and after January 1, 2000, the owner or operator of each such budget unit at the source must

- comply with the monitoring requirements of 40 CFR 96, subpart H. The account representative of each such budget unit at the source shall comply with those sections of the monitoring requirements of 40 CFR 96, subpart H, applicable to an account representative.
- 2) The compliance of each budget unit subject to the requirements of subsection (c)(1) or subsection (c)(3)(A) of this Section with the control period NO_x emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart H.
 - 3) For budget units which commenced operation prior to January 1, 2000:
 - A) The owner or operator of each such budget unit at the source must comply with the requirements of 40 CFR 96, subpart H; or
 - B) If the monitoring requirements of 40 CFR 96, subpart H, are demonstrated by the source to be technically infeasible as applied to a budget unit subject to the requirements of this Subpart, the owner or operator of such budget unit may monitor by an alternative monitoring procedure for the budget unit approved by the Agency and the Administrator of USEPA pursuant to the provisions of 40 CFR 75, subpart E. Such alternative monitoring procedures must be contained as federally enforceable conditions in the unit's permit.
 - 4) The compliance of each budget unit subject to the requirements of subsection (c)(3)(B) of this Section shall be determined by the emissions measurements recorded and reported in accordance with the federally enforceable conditions in the budget unit's permit addressing monitoring as required by subsection (c)(3)(B) of this Section.
- d) Allowance requirements:
- 1) As of November 30 of each year, the allowance transfer deadline, the account representative of each source subject to the requirements of this Subpart must hold allowances available for compliance deductions under 40 CFR 96.54 for each budget unit at the source subject to this Subpart in the budget unit's compliance accounts, or the source's overdraft account. The number of allowances held in these accounts shall not be less than the total NO_x emissions for the control period (rounded to the nearest whole

ton), as determined in accordance with subsection (c) of this Section, plus any number of allowances necessary to account for actual utilization (e.g., for testing, start-up, malfunction, and shut down) under 40 CFR 96.42(e) for all budget units at the source subject to this Subpart. Compliance with this provision shall be demonstrated if, as of the allowance transfer deadline, the sum of the allowances available for compliance deductions for all budget units at the source subject to this Subpart is equal to or greater than the total NO_x emissions (rounded to the nearest whole ton) from all budget units at the source subject to this Subpart.

- 2) Allowances shall be held in, deducted from, or transferred among allowance accounts in accordance with this Subpart and 40 CFR 96, subparts F and G.
- 3) Each ton of NO_x emitted by a source with one or more budget units subject to this Subpart in any control period in excess of the NO_x allowances held by the owner or operator for each budget unit at the source subject to this Subpart for each control period shall constitute a separate violation of this Subpart and the Act.
- 4) In order to comply with the requirements of subsection (d)(1) of this Section, an allowance may not be utilized for a control period in a year prior to the year for which the allowance was allocated.
- 5) An allowance allocated by the Agency or USEPA under the NO_x Trading Program is a limited authorization to emit one ton of NO_x. No provision of the NO_x Trading Program, any permit issued or permit application submitted pursuant to this Subpart, or an exemption under 40 CFR 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit this authorization.
- 6) An allowance allocated by the Agency or USEPA under the NO_x Trading Program or pursuant to this Subpart does not constitute a property right.
- 7) Upon recordation by USEPA under 40 CFR 96, subpart F or G, every allocation, transfer, or deduction of an allowance to or from a budget unit's compliance account or to or from the source's general or overdraft account where the budget unit is located is deemed to amend automatically and become a part of any budget permit of the budget unit. This automatic amendment of the budget permit shall occur by operation of law and will not require any further review.

- e) Recordkeeping and reporting requirements:
 - 1) Unless otherwise provided, the owner or operator of a source subject to the requirements of this Subpart must keep at the source each of the documents listed in subsections (e)(1)(A) through (e)(1)(D) of this Section for a period of 5 years from the date the document is created. This period may be extended for cause at any time prior to the end of 5 years in writing by the Agency or USEPA.
 - A) The account certificate of representation for the account representative for the source and each budget unit at the source subject to the requirements of this Subpart and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 40 CFR 96.13, provided that the certificate and such supporting documents must be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the account representative.
 - B) All emissions monitoring information, in accordance with subsection (c) of this Section, provided that to the extent that 40 CFR 96, subpart H, provides for a three-year period for recordkeeping, the three-year period shall apply.
 - C) Copies of all reports, compliance certifications, and other submissions and all records made or required under this Subpart or the NO_x Trading Program or documents necessary to demonstrate compliance with the requirements of this Subpart or the NO_x Trading Program.
 - D) Copies of all documents used to complete a budget permit application and any other submission under this Subpart or under the NO_x Trading Program.
 - 2) The account representative of a source and each budget unit at the source subject to the requirements of this Subpart must submit to the Agency and USEPA the reports ~~and compliance certifications~~ required under this Subpart and the NO_x Trading Program, including those under 40 CFR 96, subparts D and H.
- f) Liability:

- 1) No revision of a budget permit shall excuse any violation of the requirements of the NO_x Trading Program or this Subpart that occurs prior to the date that the revision under such budget permit takes effect.
- 2) Each budget source and each budget unit at the source shall meet the requirements of the NO_x Trading Program.
- 3) Any provision of this Subpart or the NO_x Trading Program that applies to a source subject to the requirements of this Subpart (including a provision applicable to the account representative of the source) shall also apply to the owner and operator of such source and to the owner and operator of the budget units subject to the requirements of this Subpart at the source.
- 4) Any provision of this Subpart or the NO_x Trading Program that applies to a budget unit subject to the requirements of this Subpart (including a provision applicable to the account representative of such budget unit) shall also apply to the owner and operator of such budget unit. Except with regard to the requirements applicable to budget units with a common stack under 40 CFR 96, subpart H, the owner and operator and the account representative of one budget unit shall not be liable for any violation by any other budget unit of which they are not an owner or operator or the account representative and that is located at a source of which they are not an owner or operator or the account representative.
- 5) Excess emissions requirements: The account representative of a source that has excess emissions in any control period shall surrender the allowances as required for deduction under 40 CFR 96.54(d)(1).
- 6) The owner or operator of a budget EGU that has excess emissions in any control period shall pay any fine, penalty, or assessment or comply with any other remedy imposed under 40 CFR 96.54(d)(3) and the Act.
- g) Effect on other authorities: No provision of this Subpart, the NO_x Trading Program, a budget permit application, a budget permit, or a retired budget unit exemption under 40 CFR 96.5 shall be construed as exempting or excluding the owner or operator and, to the extent applicable, the account representative of a source or budget unit from compliance with any other regulations promulgated under the CAA, the Act, an approved State implementation plan, or a federally enforceable permit.

(Source: Amended at ____ Ill. Reg._____, effective_____)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS
)

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 NON-ELECTRIC GENERATION UNITS (“NON-EGUs”): AMENDMENTS TO 35 ILL. ADM. CODE PART 217.SUBPART U, and APPEARANCE 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

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

/s/

Rachel L. Doctors
Assistant Counsel
Air Regulatory Unit
Division of Legal Counsel

Dated: August 19, 2010

1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544
217.782.9143 (TDD)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

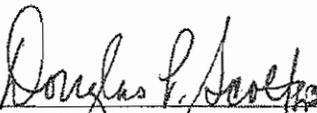
IN THE MATTER OF:)
)
NO_x TRADING PROGRAM SUNSET) R11-
PROVISIONS FOR NON-ELECTRIC) (Rulemaking - Air)
GENERATING UNITS:)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217.SUBPART U)

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: August 17, 2010



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 24 2009

REPLY TO THE ATTENTION OF:

AR-18J

Laurel Kroack
Chief
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Dear Ms. Kroack:

I am writing to respond to your verbal inquiries regarding U.S. Environmental Protection Agency policy for non-electric generating unit sources (non-EGUs) pursuant to the nitrogen oxides (NO_x) State Implementation Plan (SIP) Call and the Clean Air Interstate Rule (CAIR). You asked about the flexibility EPA offers states in achieving NO_x emission budgets under these regulations, in particular whether we offer Illinois the option to achieve these budgets through direct regulation of these emissions rather than through participation in a trading program. You also asked what related requirements are currently in effect for non-EGUs.

EPA regulations under the NO_x SIP Call and CAIR expressly provide states the flexibility to achieve emission budgets by means other than participation in a trading program. In the preamble to the NO_x SIP Call, EPA stated that “[i]n providing a cap-and-trade program as a streamlined means by which to comply with the NO_x SIP call, EPA does not preclude implementation of other solutions.” (63 FR 57457, October 27, 1998.) Further, “States . . . have the flexibility to respond as they see fit to meet their emissions budgets established under the NO_x SIP call. States are free to pursue other regulatory mechanisms or include other types of trading programs.” (63 FR 57458, October 27, 1998.)

EPA provided similar flexibility for the CAIR NO_x Ozone Season Trading Program. EPA’s proposal of CAIR did not provide for including non-EGUs in the NO_x ozone season trading program. After considering public comments, EPA offered the option for states to require participation of non-EGUs in the trading program. However, EPA also offered states the option to exclude these sources from the trading program: “States have the flexibility to include, as full trading partners, all trading sources affected by the NO_x SIP Call in the ozone-season CAIR NO_x cap and trade program.” (70 FR 25275, May 12, 2005.) EPA made a similar statement in its approval of Illinois’ submittal addressing CAIR: “States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the State’s NO_x SIP Call trading program that are not EGUs as defined under CAIR. However, Illinois has chosen not to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all

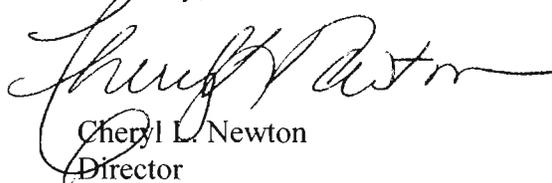
non-EGUs in the State's NOx SIP Call trading program." (72 FR 58532, October 16, 2007.)

The emission budget requirements of the NOx SIP Call regulations remain in effect. If Illinois chooses to include only EGUs in the CAIR NOx Ozone Season Trading Program, Illinois will need to demonstrate that sufficient restrictions on non-EGU emissions are in place to assure the continued satisfaction of the emission budget requirements under the NOx SIP Call. We understand that historic emissions for non-EGUs are well below the emission budget and that significant emission restrictions are in place for non-EGUs as a result of a combination of consent decrees (presumably to be replaced with equivalent permit restrictions), permit restrictions, and your recently adopted NOx reasonably available control technology regulations. We look forward to working with you as you evaluate the adequacy of those restrictions in meeting emission budget requirements of the NOx SIP Call, now and in the future.

EPA has approved Illinois' submittals addressing the NOx SIP Call, based on your rules in Part 217. (See 66 FR 56449 and 66 FR 56454, November 8, 2001.) As noted above, EPA has also approved Illinois' CAIR submittal. The NOx SIP Call requirement that non-EGUs comply with emissions monitoring, recordkeeping, and reporting requirements for NOx mass emissions under 40 CFR Part 75 remain in effect. However, EPA is no longer operating the trading program under the NOx SIP Call; EPA is instead operating the CAIR NOx Ozone Season Trading Program, which replaced the NOx SIP Call program. Since non-EGUs in Illinois are not currently part of the CAIR NOx Ozone Season Trading Program, EPA will neither issue allowances to these sources nor deduct allowances according to reported emissions, and these sources currently have no compliance obligation to hold allowances in an amount equivalent to ozone season emissions.

Thank you for your efforts on these issues. I look forward to working with you on your evaluation of alternative means of meeting applicable requirements. If you have further questions, please contact me or your staff may contact John Summerhays at 312-886-6067.

Sincerely,



Cheryl L. Newton
Director

Air and Radiation Division

Sources Affected by the Nox SIP Call.

Source ID Number	Facility Name	Comments
031012ABI	Corn Products International Inc	
033808AAB	Marathon Petroleum Co LLC	
041030ABG	SUEZ DEGS of Tuscola LLC (Trigen Cenergy)	
063800AAJ	Morris Cogeneration LLC	
097811AAC	Naval Training Center	
115015AAE	Archer Daniels Midland Co	
143065AJE	Archer Daniels Midland Co	
115015ABX	Tate & Lyle	
119090AAA	ConocoPhillips Co	
179060ACR	Aventine Renewable Energy Inc	
183020ABT	Bunge Grain Milling Inc	
197090AAI	CITGO Petroleum Corp	
197800AAA	Exxon Mobil Oil Corp	
197800ABZ	Flint Hills Resources LP	
031600ALZ	U. S. Steel	shut down
119010AAL	Green Investment Group Inc (Jefferson Smurfit)	shut down
031600AMC	Chicago Coke Co Inc (LTV)	shut down
031600FLT	Univ. of Chicago	

Electronic Filing - Received, Clerk's Office, August 19, 2010

***** R2011-008 *****

Source ID Number	Facility Name	Contact	phone	line3	city	state	zip
031012ABI	Corn Products International Inc	Rob Mead	708-563-5334	6400 S Archer Ave	Bedford Park	IL	60501
033808AAB	Marathon Petroleum Co LLC	C.T. Case	618-544-2121	100 Marathon Ave	Robinson	IL	62454
041030ABG	SUEZ DEGS of Tuscola LLC	Robert L Denton	317-838-2108	625 E US Hwy 36	Tuscola	IL	61953
063800AAJ	Morris Cogeneration LLC	Carolyn Gibson	815-941-0765	8805 N Tabler Rd	Morris	IL	60450
097811AAC	Dept. of the Navy	Blayne Kirsch	847-688-5999	2703 Sheridan Rd	Great Lakes	IL	60088-5000
115015AAE	Archer Daniels Midland Co	Pete Brinkoetter	217-451-8689	4666 Faries Pkwy	Decatur	IL	62526
143065AJE	Archer Daniels Midland Co	Jim McQuellon	309-669-1614	1 Edmund St	Peoria	IL	61602
115015ABX	Tate & Lyle Ingredients Americas, Inc.	Brianr J Sweeley	217-421-3752	2200 E Eldorado St	Decatur	IL	62521-1578
119090AAA	WRB Refining LLC	David Dunn	618-255-2418	900 S Central Ave	Roxana	IL	62084
179060ACR	Aventine Renewable Energy LLC	Steve Antonacci	309-347-9241	1300 S 2nd St	Pekin	IL	61554
183020ABT	Bunge Milling	Danica Hayes	217-443-9805	321 E North St	Danville	IL	61832-5818
197090AAI	CITGO Petroleum Corp	Claude Harmon	630-257-4308	135th St and New Ave	Lemont	IL	60439
197800AAA	Exxon Mobil Oil Corp	Jeffrey L Noga	815-423-7754	PO 874	Joliet	IL	60434
197800ABZ	Flint Hills Resources LP	Mike Hallgarth	815-467-3345	PO 941	Joliet	IL	60434
031600FLT	The University of Chicago	Steve Beaudoin	773-702-0711	5555 South Ellis Ave - 3rd Floor	Chicago	IL	60637