

ILLINOIS POLLUTION CONTROL BOARD  
December 2, 2010

IN THE MATTER OF: )  
)  
PROPOSED SITE-SPECIFIC NO<sub>x</sub> RULE ) R11-17  
AMENDMENT APPLICABLE TO SAINT- ) (Site-Specific Rulemaking - Air)  
GOBAIN CONTAINERS, INC. AT 35 ILL. )  
ADM. CODE 217.152(b) )

ORDER OF THE BOARD (by A.S. Moore):

On November 24, 2010, Saint-Gobain Containers, Inc. (SGCI) filed a petition (Pet.) for site-specific rulemaking pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2008)) and Sections 102.202 and 102.210 of the Board's procedural rules (35 Ill. Adm. Code 102.202, 102.210). Accompanying the petition were both a motion to waive the 200-signature requirement (Mot. Waive) and a motion for expedited review (Mot. Exp.). See 415 ILCS 5/28 (2008), 35 Ill. Adm. Code 101.512, 102.202(g).

For the reasons stated below, the Board accepts SGCI's petition for site-specific rulemaking for hearing and grants SGCI's motion for waiver of the requirement to submit 200 signatures. Although the Board denies SGCI's motion for expedited review, it directs the Clerk to provide first notice of the proposal without commenting on its substantive merits and also directs its hearing officer to avoid unnecessary delay in scheduling a hearing and otherwise completing the record.

**SGCI'S PROPOSAL**

SGCI owns and operates a glass manufacturing plant, including three glass melting furnaces, at 13850 Cottage Grove Avenue in Dolton. Pet. at 2, 5. Referring to the Board's air pollution regulations, SGCI states "Subpart G requires such glass melting furnaces located in ozone and PM<sub>2.5</sub> nonattainment areas in Illinois to meet a NO<sub>x</sub> emissions limitation of 5.0 lb/ton of glass produced, by January 1, 2012." *Id.* at 2, citing 35 Ill. Adm. Code 217.204. SGCI further states that the regulations include an alternative compliance date of December 31, 2014 for units "required to meet emissions limitations for NO<sub>x</sub>, as measured using a continuous emissions monitoring system, and included within a legally enforceable order on or before December 31, 2009, whereby such emissions limitations are less than 30 percent of the emissions limitations set forth under Section 217.204." 35 Ill. Adm. 217.152(b); see Pet. at 2, 8-10.

SGCI indicates that it sought this alternative December 31, 2014 compliance date "because of an agreement that was being negotiated between SGCI, the United States Environmental Protection Agency, the Illinois Attorney General's office, the Illinois EPA [Environmental Protection Agency] and certain other states" at the time the Board was considering and promulgating Subpart G. Pet. at 2; citing Nitrogen Oxides Emissions from Various Source Categories: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R 08-19 (May 7, 2009) (first-notice opinion and order). SGCI suggests that, while the participants in the

Board's rulemaking process anticipated the completion of an appropriate agreement by December 31, 2009, "the United States District Court for the Western District of Washington did not enter the Consent Decree meeting the requirements of 35 Ill. Adm. Code 217.152(b) until May 7, 2010. Pet. at 2-3; *see id.* at 8-11; *id.*, Exh. C (Agency letter). SGCI states that, in order for its Dolton plant to qualify for the December 31, 2014 compliance date, it proposes to amend Section 217.152(b) by changing the deadline for obtaining a legally enforceable order to May 7, 2010. Pet. at 3, 10.

SGCI indicates that the Illinois Environmental Protection Agency (Agency) "has stated its support for such an amendment." *Id.* at 1.

### **MOTION FOR EXPEDITED REVIEW**

SGCI states that its petition for site-specific rulemaking proposes "to change the date by which a qualifying legally enforceable order must be obtained in order to meet the requirements for a compliance date of December 31, 2014. . . ." Mot. Exp. at 2, citing 35 Ill. Adm. Code 217.152(b). SGCI claims that adoption of its proposed site-specific rule is necessary for it to operate its three glass melting furnaces in compliance with both Board regulations and a recently-adopted Consent Decree. Mot. Exp. at 2, citing Pet., Exh B (consent decree). SGCI expresses the belief "that Section 217.152(b) has been submitted to USEPA [United States Environmental Protection Agency], along with the other Subpart G provisions, for approval as a revision to Illinois' SIP [State Implementation Plan]." Mot. Exp. at 2. SGCI indicates that "USEPA has not yet acted on the SIP revision." *Id.* SGCI states that, if the Board adopts the proposal, USEPA could consider it with the pending request for a SIP revision. SGCI characterizes this consideration as a more efficient use of regulatory resources. *Id.* at 3.

SGCI claims that, because of the delay in obtaining a legally enforceable order enabling it to qualify for the extended compliance deadline in Section 217.152(b), "[t]ime is of the essence. . . ." Mot. Exp. at 3. SGCI argues that, without an appropriate site-specific rule amendment in place by January 1, 2012, it will be required to meet the generally applicable compliance deadline and emissions limitation in Section 217.152(a). *Id.* at 3-4; *see* 35 Ill. Adm. Code 217.152. SGCI further argues that, "[a]s a practical matter, SGCI will be materially prejudiced if this Motion is denied because of the approaching compliance deadline in the Board regulations." Mot. Exp. at 4.

Although entitled a motion for expedited review, SGCI's motion requests specifically that the Board submit the proposed site-specific rule to first-notice publication without commenting on its substantive merits. Mot. Exp. at 2-3, 4 (citations omitted). SGCI also requests that the Board schedule a public hearing on its proposal "as soon as possible. . . ." *Id.* at 3, 4.

### **MOTION TO WAIVE SIGNATURE REQUIREMENT**

SGCI states that its Dolton plant employs more than 390 persons. Mot. Waive at 2. SGCI claims that its proposed site-specific rule "is necessary to enable SGCI to operate its plant in compliance with Board regulations and the Consent Decree" recently adopted by a federal

court. *Id.*, citing Pet., Exh B. SGCI also claims that adoption of its proposal “will result in the installation of pollution control equipment that will limit NO<sub>x</sub> emission from the glass melting furnaces to below 30 percent of the general emission limitations in Subpart G.” Mot. Waive at 3; *see* 35 Ill. Adm. Code 217.204. SGCI thus argues that granting the motion to waive the signature requirement “is in the public’s best interest.” Mot. Waive at 2. SGCI notes that the Board in the recent past has waived the requirement in site-specific rulemakings. *Id.* (citations omitted).

## **DISCUSSION**

### **Rulemaking Proposal**

The Board finds that SGCI’s petition for a site-specific rule amendment meets the content requirements of the Board’s procedural rules and accepts the petition for hearing. *See* 35 Ill. Adm. Code 102.208 and 102.210.

### **Motion for Expedited Review**

Section 101.500(d) of the Board’s procedural rules provides in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. . . . Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period. . . .” 35 Ill. Adm. Code 101.500(d). Having reviewed the substance of SGCI’s motion, and noting the Agency’s general support for SGCI’s petition (*see* Pet., Exh. C), the Board concludes that undue delay would result from allowing the 14-day response period to run. Accordingly, the Board turns to considering and deciding the motion.

Section 101.512 of the Board’s procedural rules addresses requests for expedited review. *See* 35 Ill. Adm. Code 101.512. Such requests must include, among other elements, “a complete statement of the facts and reasons for the request.” 35 Ill. Adm. Code 101.512(a). In acting on a motion for expedited review, the Board considers, at a minimum, “all statutory requirements and whether or not material prejudice will result from the motion being granted or denied.” 35 Ill. Adm. Code 101.512(b). In addition, the Board will only grant a motion for expedited review consistent with available resources. *See* 35 Ill. Adm. Code 101.512(c).

For various reasons, the Board cannot expedite consideration of every case or rulemaking proposal. In denying a motion for expedited review filed by the City of Galva, the Board stated in 2009 that its “limited resources in light of its current and future decision deadlines render the granting of a motion for expedited review unlikely in all but the most dire circumstances.” In the Matter of: City of Galva Site-Specific Water Quality Standard for Boron Discharges to Edwards River and Mud Creek: 35 Ill. Adm. Code 303.447 and 303.448, R9-11, slip op. at 3 (Feb. 5, 2009); *see also* In the Matter of: Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Adm. Code Part 840.101 through 840.152, R09-21, slip op. at 9-10 (June 18, 2009) (denying motion for expedited review); In the Matter of: Petition of Westwood Lands, Inc. for an Adjusted Standard from Portions of 35 Ill. Adm. Code 807.104 and 810.103 or, in the Alternative, a Finding of Inapplicability, AS 09-3, slip op. at 10 (May 21, 2009) (same).

The Board did recently grant motions to expedite consideration of proposed rules when the Agency described the risk of USEPA sanctions if the State failed to remedy deficiencies in its State Implementation Plan for ozone attainment. In each of those two rulemaking proceedings, the Board found that the USEPA deadline and risk of federal sanctions constituted “dire circumstances.” Section 27 Proposed Rules for Nitrogen Oxide (NO<sub>x</sub>) Emissions From Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R07-19, slip op. at 4 (Apr. 2, 2009); In the Matter of: Nitrogen Oxides Emissions from Various Source Categories, Amendments to 35 Ill. Adm. Code Parts 211 and 217, R08-19, slip op. at 4 (Apr. 2, 2009).

As noted above, expedited review is granted consistent with the Board’s decision deadlines and available resources. *See* 35 Ill. Adm. Code 101.512(c). The Board currently has underway a number of rulemaking dockets requiring significant attention, as well as pressing cases of other types. As a result of attrition, the Board has fewer staff than in the recent past. These circumstances have not meaningfully changed since the Board denied the City of Galva’s motion for expedited review. These limited resources, particularly in light of current and future decision deadlines, continue to make it unlikely that the Board will grant a motion for expedited review in all but the most dire circumstances.

The Board does not discount SGCI’s position that it experienced a delay in securing a qualifying enforceable order. The Board also does not discount SGCI’s interest in regulatory certainty. However, these factors do not necessarily constitute “material prejudice” or dire circumstances sufficient to allow the Board to grant SGCI’s motion. Accordingly, the motion is denied.

However, the Board notes that SGCI’s specific request that the Board submit the amendment to Section 217.152(b) to first notice publication without commenting on its substantive merits. The Board believes that this may step may contribute to more expeditious adoption of a rule without reducing the flexibility of the Board or other rulemaking participants. SGCI has also requested that the Board schedule a public hearing on the proposal as soon as possible. The Board directs its hearing office to avoid unnecessary delay in scheduling a hearing and otherwise completing the record.

#### **Motion for Waiver of Signature Requirement**

Section 101.500(d) of the Board’s procedural rules provides in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. . . . Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period. . . .” 35 Ill. Adm. Code 101.500(d). Having committed above to steps that may result in more expeditious adoption of a rule, and in the absence of any opposition to the motion to date, the Board concludes that undue delay would result from allowing the 14-day response period to run. Accordingly, the Board turns to considering and deciding the motion. Having reviewed the substance of SGCI’s motion, the Board grants the motion and waives the requirement that SGCI submit the signatures of 200 persons with its proposal.

## CONCLUSION

For the reasons stated above, the Board accepts SGCI's petition for site-specific rulemaking for hearing and grants SGCI's motion for waiver of the requirement to submit 200 signatures. Although the Board denies SGCI's motion for expedited review, it directs the Clerk to provide first notice of the proposal without commenting on its substantive merits and also directs its hearing officer to avoid unnecessary delay in scheduling a hearing and otherwise completing the record.

## ORDER

The Board directs the Clerk to cause the first notice publication of the following rule in the *Illinois Register*:

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<sub>x</sub> 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
217.242	Exemptions
217.244	Emissions Limitations

### SUBPART K: PROCESS EMISSION SOURCES

Section  
217.301 Industrial Processes

### SUBPART M: ELECTRICAL GENERATING UNITS

Section  
217.340 Applicability  
217.342 Exemptions  
217.344 Emissions Limitations  
217.345 Combination of Fuels

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

### SUBPART U: NO<sub>x</sub> CONTROL AND TRADING PROGRAM FOR SPECIFIED NO<sub>x</sub> 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 <sub>x</sub> Trading Budget
217.462	Methodology for Obtaining NO <sub>x</sub> Allocations
217.464	Methodology for Determining NO <sub>x</sub> Allowances from the New Source Set-Aside
217.466	NO <sub>x</sub> 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 <sub>x</sub> 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 <sub>x</sub> Averaging
217.710	Monitoring
217.712	Reporting and Recordkeeping

#### SUBPART W: NO<sub>x</sub> 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 <sub>x</sub> Trading Budget
217.762	Methodology for Calculating NO <sub>x</sub> Allocations for Budget Electrical Generating Units (EGUs)
217.764	NO <sub>x</sub> 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 <sub>x</sub> Trading Program



- 217.780 Opt-In Units: Change in Regulatory Status  
 217.782 Allowance Allocations to Budget Opt-In Units

#### SUBPART X: VOLUNTARY NO<sub>x</sub> EMISSIONS REDUCTION PROGRAM

- |                |   |
|----------------|---|
| Section        |   |
| 217.800        | Purpose   |
| 217.805        | Emission Unit Eligibility   |
| 217.810        | Participation Requirements  |
| 217.815        | NO <sub>x</sub> Emission Reductions and the Subpart X NO <sub>x</sub> Trading Budget        |
| 217.820        | Baseline Emissions Determination  |
| 217.825        | Calculation of Creditable NO <sub>x</sub> Emission Reductions                               |
| 217.830        | Limitations on NO <sub>x</sub> Emission Reductions  |
| 217.835        | NO <sub>x</sub> Emission Reduction Proposal   |
| 217.840        | Agency Action   |
| 217.845        | Emissions Determination Methods   |
| 217.850        | Emissions Monitoring  |
| 217.855        | Reporting   |
| 217.860        | Recordkeeping   |
| 217.865        | Enforcement   |
| 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 <sub>x</sub> SIP Call |
| 217.APPENDIX H | Compliance Dates for Certain Emissions Units at Petroleum Refineries                        |

Authority: Implementing Sections 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28 (2008)].

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 R11-17 at 35 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART D: NO<sub>x</sub> GENERAL REQUIREMENT


**Section 217.152 Compliance Date**

- a) Compliance with the requirements of Subparts E, F, G, H, I and M by an owner or operator of an emission unit that is subject to any of those Subparts is required beginning January 1, 2012.
- b) Notwithstanding subsection (a) of this Section, compliance with the requirements of Subpart G of this Part by an owner or operator of an emission unit subject to Subpart G of this Part shall be extended until December 31, 2014, if such units are required to meet emissions limitations for NO<sub>x</sub>, as measured using a continuous emissions monitoring system, and included within a legally enforceable order on or before ~~December 31, 2009~~ May 7, 2010, whereby such emissions limitations are less than 30 percent of the emissions limitations set forth under Section 217.204.
- c) Notwithstanding subsection (a) of this Section, the owner or operator of emission units subject to Subpart E or F of this Part and located at a petroleum refinery must comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, for those emission units beginning January 1, 2012, except that the owner or operator of emission units listed in Appendix H must comply with the requirements of this Subpart, including the option of demonstrating compliance with the applicable Subpart through an emissions averaging plan under Section 217.158 and Subpart E or F of this Part, as applicable, for the listed emission units beginning on the dates set forth in Appendix H. With Agency approval, the owner or operator of emission units listed in Appendix H may elect to comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, by reducing the emissions of emission units other than those listed in Appendix H, provided that the emissions limitations of such other emission units are equal to or more stringent than the applicable emissions limitations set forth in Subpart E or F of this Part, as applicable, by the dates set forth in Appendix H.

(Source: Amended at 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 2, 2010, by a vote of 5-0.




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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board