

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
NO _x TRADING PROGRAM SUNSET)	R11- 8
PROVISIONS FOR NON-ELECTRIC)	(Rulemaking – Air)
GENERATING UNITS (“NON-EGU”):)	
AMENDMENTS TO 35 ILL.)	
ADM. CODE PART 217, SUBPART U)	

POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by one of attorneys, Rachel L. Doctors, and hereby submits comments in the above rulemaking proceeding. The Illinois EPA indicated in the hearing held on December 9, 2010, that it would address several questions raised concerning the proposal in post-hearing comments.

RESPONSES TO QUESTIONS RAISED DURING THE DECEMBER 9, 2010 HEARING

Question: There was a concern that including all of the provisions in Section 217.254 (Applicability) was overly broad. In addition, subsection (b) references “emission limitations” and the “NO_x Trading Program,” terms that are no longer applicable to these units.

Response: The Illinois EPA agrees. It recommends sunseting all subsections in Section 217.454 except (a) and (b). Further, subsection (b) should be amended because the NO_x Trading program no longer exists and there are no longer any emissions limitations under that program that apply to Non-EGUs. It recommends the following revision: “Those units that meet the above criteria ~~and are subject to the NO_x Trading Program emissions limitations in this Subpart~~ are budget units.” The term “budget unit” is being retained because it is a term that is used in federal requirements for monitoring. The Illinois EPA notes that the sunseting of subsections (c) through (e) is appropriate, as their provisions and requirements are obsolete. No source elected low-emitter status under subsection (c). No source is currently required to obtain NO_x allowances under subsection (d). And, the underlying statutory requirement in subsection (e) has been repealed. Attached is a copy showing the Illinois EPA’s recommended amendments, including amendments to proposed Section 217.451.

ATTACHMENT "A"

Section 217.451 Sunset Provisions

Except for Sections 217.454(a) and (b) (Applicability), and 217.456(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 Sections listed herein. 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 217.454 Applicability

- a) This Subpart applies to any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr and that is:
 - 1) A unit listed in Appendix E of this Subpart, irrespective of any subsequent changes in ownership, unit designation, or name of the unit; or
 - 2) A unit not listed in Appendix E of this Subpart that:
 - A) At no time serves a generator producing electricity for sale;
 - B) At any time serves a generator producing electricity for sale, if such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is smaller than this calculated number, the unit is subject to the provisions of this Subpart, but if the size of the generator is greater than this calculated number, the unit is subject to the provisions of Subpart W of this Part;
 - C) Is part of any source, as that term is defined in 35 Ill. Adm. Code Section 211.6130, listed in Appendix E of this Part; or
 - D) Is a unit subject to Subpart W of this Part (excluding any unit listed in Appendix F of this Part, regardless of any change in ownership or any change of operator), and the owner or operator makes a permanent election, at the time of applying for a budget permit pursuant to this Part, to subject the unit to the requirements of this Subpart rather than Subpart W of this Part. Any unit for which

such an election is made will not receive an allocation from the Subpart U or Subpart W NO_x Trading Budget.

- b) Those units that meet the above criteria ~~and are subject to the NO_x Trading Program emissions limitations contained in this Subpart~~ are budget units.
- c) Low-emitter status: Notwithstanding subsection (a) of this Section, the owner or operator of a budget unit subject to the requirements of subsection (a) of this Section may elect low-emitter status by obtaining a permit with federally enforceable conditions that meet the requirements of Section 217.472(a). Starting with the effective date of such permit, the unit shall be subject only to the requirements of Section 217.472.
- d) The owner or operator of any budget unit not listed in Appendix E of this Part but subject to this Subpart shall not receive an allocation of NO_x allowances from the Subpart U or Subpart W NO_x Trading Budget, except for any allowance from the new source set-aside in accordance with Section 217.468 of this Subpart. Such unit must acquire NO_x allowances in an amount not less than the NO_x emissions from such budget unit during the control period (rounded to the nearest whole ton) in accordance with the federal NO_x Trading Program, Subpart X of this Part or pursuant to a permanent transfer of NO_x allocations pursuant to Section 217.462(b) of this Subpart.
- e) Notwithstanding any other provisions of this Subpart, a source and units at the source subject to the provisions of subsection (a) of this Section will become subject to this Subpart on *the first day of the control season subsequent to the calendar year in which all of the other states subject to the provisions of the NO_x SIP Call (63 Fed. Reg. 57355 (October 27, 1998)) that are located in USEPA Region V or are that contiguous to Illinois have adopted regulations to implement NO_x trading programs and other required reductions of NO_x emissions pursuant to the NO_x SIP Call, and such regulations have received final approval by USEPA as part of the respective states' SIPs for ozone, or a final FIP for ozone promulgated by USEPA is effective.* [415 ILCS 5/9.9(f)]

(Source: Amended 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 _____)

SERVICE LIST

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

Katherine D. Hodge
Monica T. Rios
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62794-5776

Alec M. Davis
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, IL 62701

Cheryl Newton
Director/Air and Radiation, Region V
United States Environmental Protection Agency
77 West Jackson
Chicago, IL 60604-3590