

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2011

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM SUNSET) R11-8
PROVISIONS FOR NON-ELECTRIC) (Rulemaking - Air)
GENERATING UNITS:)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217.SUBPART U)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.L. Blankenship)

The Board today proposes for second notice review by the Joint Commission on Administrative Rules (JCAR) amendments to its air rules. *See* 35 Ill. Adm. Code 217.Subpart U. The Illinois Environmental Protection Agency (Agency or IEPA) initiated this proceeding by filing a rulemaking proposal on August 19, 2010 (Ag. Prop.). The proposal sunsets the trading provisions of the Nitrogen Oxide Trading Program (NO_x Trading Program) for non-electric generating units (non-EGUs). The sole provisions amended involve the holding and trading provisions for NO_x allowances in Part 217.Subpart U, codified at 35 Ill. Adm. Code Part 217. Subpart U (Subpart U).

After conducting two public hearings in this matter and considering the entire record, the Board on June 3, 2011, proposed for first notice publication the amendments to its air rules.

In the opinion below, the Board first provides the procedural history of this rulemaking. The Board then summarizes the Agency's original proposal, testimony and pre-filed testimony for both hearings, before finally concluding this opinion.

The order following this opinion sets forth the proposed amendments for second notice review by JCAR.

PROCEDURAL HISTORY

On August 19, 2010, the Agency filed a proposal for a statewide general rulemaking, requesting that the Board amend its air rules to sunset the trading provisions of the NO_x Trading Program. The Board accepted the Agency's proposal for hearing on September 2, 2010.

In a letter dated October 26, 2010, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the Agency's rulemaking proposal. *See* 415 ILCS 5/27(b) (2008). On December 7, 2010, a letter from the DCEO respectfully declined the request, stating that the Department was unable to undertake such a request at the time.

On October 22, 2010, hearing officer Daniel Robertson scheduled a hearing to be held on December 9, 2010, in Springfield, Sangamon County. On November 29, 2010, the Agency submitted the pre-filed testimony of Yoginder Mahajan. No other filings were received. The hearing took place as scheduled on December 9, 2010 and the Board received the hearing transcript on December 14, 2010. During the hearing, the hearing officer admitted Mr. Mahajan's pre-filed testimony as the only exhibit into the record (Hearing Exh. 1). The Agency filed its post-hearing comments (PC1) on January 14, 2011.

In an order dated December 6, 2010, the hearing officer scheduled a second hearing on February 3, 2011 in Chicago, Cook County. Extreme winter weather conditions caused a number of businesses to close on February 3, 2011. The hearing was convened as scheduled but immediately cancelled and rescheduled for February 17, 2011, in Chicago, Cook County. No testimony was heard and no exhibits were entered at the February 3, 2011 hearing. The Board received the transcript of the February 3, 2011 hearing on February 7, 2011.

The hearing was reconvened as scheduled on February 17, 2011. No testimony was heard and no exhibits were entered at the February 17, 2011 hearing. The transcript for the February 17, 2011 hearing was received on February 28, 2011. Pursuant to hearing officer order, final comments were due to be filed by March 21, 2011. On March 21, 2011, the Illinois Environmental Regulatory Group (IERG) filed its post-hearing comment (PC2). No other filings were received by the Board.

On May 19, 2011, the Board adopted the proposal for first notice publication. This notice was published in the *Illinois Register* on June 3, 2011.

On June 1, 2011, JCAR filed its changes to the proposal. To date, no further comments have been received.

SUMMARY OF AGENCY'S ORIGINAL PROPOSAL

By way of background, the Agency explained that on March 1, 2001, the Board adopted Part 217.Subpart U. SR at 1. Under the NO_x Trading Program of the United States Environmental Protection Agency (USEPA), USEPA required that Illinois regulate non-electric generation units (non-EGUs) and the Board adopted Subpart U to regulate NO_x emissions from these Non-EGUs. *Id.*, citing 63 Fed. Reg. 57356 (Oct. 27, 1998). On November 8, 2001, USEPA approved Subpart U as part of the Illinois State Implementation Plan (SIP) for ozone. SR at 1. Specifically, Subpart U implements USEPA's NO_x Trading Program to reduce ozone transport from Non-EGUs and satisfies Illinois' obligations under Sections 110(a) (2) and 126 of the Clean Air Act (CAA) and 40 CFR 51.121. SR at 1-2.

On May 12, 2005, Congress adopted the Clean Air Interstate Rule (CAIR) to replace the federal NO_x Trading Program, beginning with a control period in 2009. *Id.* at 2. On October 16, 2007, USEPA approved the Board's provisions implementing CAIR for electric generating units (EGUs) such as utility boilers in 35 Ill. Adm. Code 225. *Id.* at 2, citing 72 Fed. Reg. 58528. While state processes for EGUs were pending, the United States Court of Appeals was reviewing CAIR pursuant to several petitions for review. SR at 2. On July 11, 2008, the United States

Court of Appeals vacated the CAIR rule and remanded the rule back to USEPA for revision, ordering that the provisions of the NO_x Trading Program would remain in effect, pending the remand. *Id.*, citing North Carolina v. USEPA, 531 F.3d 896 (C.A.D.C. Cir. 2008).

However, the same parties that petitioned for review then petitioned for rehearing on the court's decision and requested that the court reinstate CAIR during the remand rather than leave in effect the provisions of the NO_x Trading Program. SR at 2. Consequently, on December 23, 2008, the court granted the rehearing and reinstated CAIR, directing that implementation begin with the original 2009 control period. *Id.* at 2, citing North Carolina v. USEPA, 550 F.3d 1176 (C.A.D.C. Cir. 2008).

The Agency described that, as a result of the court reinstating CAIR, Illinois' non-EGUs no longer need to comply with the NO_x Trading Program requirements for holding and trading NO_x allowances for any control period after 2008 because USEPA is no longer allocating allowances for the NO_x Trading Program. SR at 3, citing Att. A (Letter from USEPA, dated September 24, 2009). Therefore, Subpart U is now moot where it requires that non-EGUs hold their allowances for the 2010 ozone season. *Id.* However, to ensure that Illinois continues to satisfy its NO_x budget, non-EGUs must continue monitoring, reporting and recordkeeping under Subpart U. *Id.*

The Agency explained that retaining Part 217.Subpart U "raises the specter of unenforceable requirements and leads to confusion as to the applicable requirements." SR at 3. Further, the Agency argued that "[u]ntil 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." *Id.*¹

Fifty-two existing non-EGU units, 4 of which are no longer operating, and 2 new non-EGU units are currently subject to the NO_x Trading Program and will not be subject to the holding and trading provisions of the NO_x Trading Program if the Board sunsets these provisions of Subpart U. SR at 3-4. According to the Agency, the amendments would impose no new requirements or costs on these Non-EGUs and would eliminate obsolete requirements. *Id.* at 4. The Agency proposed that the Board sunset any requirements related to the holding and trading portion of the NO_x Trading Program as set forth in Subpart U, beginning with the 2009 control period, while retaining the provisions for violations that occurred in control periods prior to 2009 and the provisions necessary to show compliance with Illinois' non-EGU NO_x Budget. *Id.*

The Agency further explained that the proposed amendments are both technically and economically feasible because they will "clarify the applicable requirements, *e.g.*, monitoring, reporting, and recordkeeping requirements, and delete obsolete requirements, *e.g.*, holding of NO_x allowances and permitting [where] USEPA has stopped allocating NO_x allowances for the NO_x SIP Call Trading Program." SR at 4-5. In addition, the Agency stated that it discussed

¹ The Agency previously proposed, and the Board adopted, rules sunseting the similar program for electric generating units in Nitrogen Oxide (NO_x) Trading Program Sunset Provisions for Electric Generating Units (EGUs): New 35 Ill. Adm. Code 217.751, R09-20 (Oct. 15, 2009).

these amendments with IERG and notified IERG via e-mail that it intended to file this proposal. *Id.* at 6. The Agency believes that interested parties have not identified significant issues. *Id.*

AGENCY TESTIMONY

December 9, 2010 Hearing Prefiled Testimony of Yoginder Mahajan

The Agency offered the testimony of Yoginder Mahajan. Mr. Mahajan has been an Environmental Protection Engineer in the Air Quality Planning Section in the Bureau of Air of the IEPA since 1992. Hearing Exh. 1 at 1. Mr. Mahajan worked for various metal fabrication industries for nine years prior to taking his position at the IEPA. *Id.* His educational background includes a Bachelor of Engineering Degree in Mechanical Engineering from Bhopal University in Bhopal, India. *Id.*

Mr. Mahajan described his duties at the IEPA to include: preparing emission estimates for various source categories used in the development of the 1990 ozone season weekday emissions inventories; evaluating control technologies applicable to volatile organic material (VOM) emissions sources utilized in the preparation of the Rate-of-Progress plans for the Chicago and St. Louis ozone nonattainment areas; and assisting in the development of regulations for the control of VOM emissions from source categories included in the Rate-of-Progress plans. Hearing Exh. 1 at 1.

Mr. Mahajan restated much of the same background outlined in the IEPA's proposal. He noted that the Board adopted Subpart U of Part 217 on March 1, 2001, pursuant to the USEPA's NO_x SIP Call. Hearing Exh. 1 at 1-2. Mr. Mahajan stated that Subpart U implemented the NO_x Trading Program to reduce NO_x emissions during the ozone season from non-EGU emission sources in Illinois. *Id.* at 2. Subpart U also met the requirements of the federal NO_x SIP Call for non-EGUs "by providing for the participation of affected sources in the federal NO_x trading program, by requiring affected sources to continuously monitor their NO_x emissions, to maintain appropriate records, and to report their emissions to [USEPA] for each ozone season beginning in 2004." *Id.*

Mr. Mahajan stated that on May 12, 2005, the USEPA adopted CAIR to replace the NO_x SIP Call trading program beginning with the 2009 control period. *Id.* CAIR established an annual NO_x trading program (in addition to the previous NO_x trading program for the ozone season) and modified the Title IV trading program to further reduce emissions of sulfur dioxide. Hearing Exh. 1 at 2. Mr. Mahajan commented that on August 23, 2007, the Board adopted Subparts D and E of 35 Ill. Adm. Code 225, the CAIR Annual NO_x Trading Program and CAIR Ozone Season NO_x Trading Program for EGUs. *Id.* Mr. Mahajan stated that, under CAIR, the USEPA provided the States the option of including non-EGUs in the ozone season NO_x trading program only. *Id.* However, the IEPA did not propose to include non-EGUs in the CAIR ozone season NO_x trading program and this was reflected in the Board's finally adopted rules. *Id.* Mr. Mahajan remarked that the USEPA approved the Board's final CAIR rules and has not allocated NO_x allowances to non-EGUs in Illinois after the 2008 control period. *Id.*

Mr. Mahajan noted that “[t]he NO_x SIP Call requirement that non-EGU[s] comply with emissions monitoring, recordkeeping, and reporting requirements for NO_x mass emissions under 40 CFR Part 75 remains in effect, as does the requirement that Illinois continue to meet the statewide ozone season NO_x emissions budget for affected non-EGUs established by the NO_x SIP Call.” Hearing Exh. 1 at 2. Mr. Mahajan stated that the IEPA’s proposal “sunsets the trading provisions and certain permitting provisions of Part 217, Subpart U beginning with the 2009 control period, since the NO_x SIP Call program is no longer administered by the [USEPA].” *Id.* at 2-3. Mr. Mahajan stated that these provisions will remain in effect for violations that occurred prior to 2009. *Id.* at 3. Mr. Mahajan also stated that the IEPA’s proposal “retains the requirements necessary to continue to demonstrate compliance with the statewide NO_x emissions budget established by the federal NO_x SIP Call for affected non-EGU sources, namely the requirement to continuously monitor NO_x emissions, maintain appropriate records, and report NO_x emissions to [USEPA].” *Id.*

Mr. Mahajan stated that reported NO_x emissions since 2004 from affected non-EGUs are well below the statewide NO_x emissions budget established by the NO_x SIP Call and that the IEPA believes that Illinois will continue to meet the NO_x emissions budget in the future. Hearing Exh. 1 at 3. Mr. Mahajan pointed out that there are significant restrictions in place for non-EGUs, resulting from a combination of consent decrees, permit restrictions and NO_x reasonably available control technology regulations adopted by this Board. *Id.*, referencing 35 Ill. Adm. Code Part 217 Subparts D through I, K and M.

Mr. Mahajan concluded that there are approximately 54 non-EGUs affected by the NO_x SIP Call in Illinois and that this proposal will not impose new requirements or costs on affected sources. Hearing Exh. 1 at 3. Mr. Mahajan believed the proposal is both technically and economically feasible. *Id.*

December 9, 2010 Hearing

The IEPA made a number of statements at hearing based on questions presented to it by Alec Davis, representing IERG and Elizabeth Steinhour, representing Weaver Boos Consultants. Rachel Doctors appeared for the IEPA alongside two witnesses, Robert Kaleel, the manager of the Air Quality Planning Section at the IEPA and David Bloomberg, the manager of the compliance unit within the Bureau of Air at the IEPA.

Mr. Kaleel stated that the intent of the proposal is to sunset portions of the previous requirements under the NO_x SIP Call, particularly the portions relating to the holding and maintaining of allowance accounts for the subject emission units. Hearing Transcript (Tr.) at 9-10. Mr. Kaleel stated that the IEPA does not anticipate any changes in the amount of emissions by the subject units. *Id.* at 10.

Mr. Kaleel was asked whether the IEPA’s statement filed in prefiled testimony – that significant restrictions are in place for non-EGUs as a result of a combination of consent decrees, permit restrictions and NO_x Reasonably Available Control Technologies (RACT) regulations adopted by the Board – was intended to mean that those significant restrictions are sufficient to

satisfy the demonstration requirement described by the USEPA.² Tr. at 13. Mr. Kaleel admitted that the IEPA has not prepared a unit-by-unit analysis of any permit or consent decree limitations such that Illinois can demonstrate or compare it to the budget and show that all of these restrictions are going to be adequate for all time to keep Illinois below the budget. *Id.* at 14.

Mr. Kaleel testified that he had discussions with staff people at the USEPA where it was recognized that what this proposal does is catch the IEPA up to something that the USEPA has already done. Tr. at 17. Mr. Kaleel noted that the USEPA has already acted in approving the IEPA's Clean Air Interstate Rules to remove non-EGUs from the budget program, causing the obligation to meet the budget to fall on the State of Illinois and not on the specific units to meet certain emission targets. *Id.* at 17-18. Mr. Kaleel also pointed out to the USEPA numerous times that the affected units in Illinois collectively are emitting NO_x at rates that are well below (possibly half) what the NO_x SIP Call budget was. *Id.* at 18. Mr. Kaleel believed that there is a "general comfort" within the USEPA that the restrictions are not an immediate concern. *Id.*

Mr. Kaleel stated that the IEPA's intent would be to continue the monitoring, recordkeeping and reporting requirements for units that fall within the applicability provisions of Subpart U, such that the IEPA can continue to track overall state compliance with the budget. Tr. at 20. Mr. Kaleel's position was that, after operation of the proposed sunset language, the particular Subpart U would not subject any remaining or new sources to emissions limitations. *Id.* at 20-21. However, if there was a new source that the section would be applicable to, the other parts of the section that still remain would apply but not the emissions limitations. *Id.* at 21. Mr. Kaleel noted that there are still a range of other emission requirements that apply to emission sources in Illinois. *Id.*

A number of other questions were raised which the IEPA noted would be addressed in a post-hearing comment. Tr. at 21-24. These questions are discussed in the post-hearing comments of the IEPA section below.

Ms. Steinberg raised the question of how the IEPA planned to handle new sources that could be potentially subject to this rule from a permitting standpoint while this rulemaking is pending. Tr. at 25. Mr. Bloomberg stated that the IEPA has not seen such new sources even while the program was active. *Id.* at 26. Mr. Bloomberg notes though that there is no federal equivalent to the program anymore and therefore the IEPA would not do anything in terms of this regulation in particular. *Id.*

Lastly, the Agency indicated two grammatical changes to be made to its proposed language. Tr. at 5.

² The IEPA included a USEPA letter in its proposal which included in part the statement that 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 NO_x SIP Call.

**POST-HEARING COMMENTS OF THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY**

The IEPA addressed three questions from the first hearing in its post-hearing comments.

The first concern was that including all of the provisions in Section 217.254 (relating to applicability) was overly broad. PC1 at 1. The IEPA agreed with this position and recommended sunsetting all subsections in Section 217.454 except subsections (a) and (b). PC1 at 1. The IEPA also believed that 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. *Id.* The IEPA proposed the following revision to subsection (b):

Those units that meet the above criteria ~~and are subject to the NO_x Trading Program emissions limitations in this Subpart~~ are budget units. *Id.*

The IEPA stated that the term “budget unit” is being retained because it is a term that is used in federal requirements for monitoring. *Id.* The IEPA believed that sunsetting subsections (c) through (e) was appropriate because their provisions and requirements are obsolete since no source selected 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. *Id.*

The IEPA agreed that inclusion of subsection (a) in Section 217.456 (Compliance) is not necessary. PC1 at 2. The IEPA also agreed that the phrases “compliance certificate” and “NO_x Trading Program” should be struck from subsections (e)(1)(C) and (D) and (e)(2). *Id.* Furthermore, the IEPA believed that the reference to “40 CFR 96 Subpart D” in subsection (e)(2) should be struck. PC1 at 2.

Lastly, the IEPA clarified on comments made at hearing that it would not do anything in particular in terms of this regulation regarding how new sources would be handled and whether they would be subject to Subpart U for permitting. PC1 at 2. The IEPA stated that a new source would be subject to the applicable permitting requirements under Sections 39 and 39.5 of the Act. *Id.*, citing 415 ILCS 5/39 and 39.5. The IEPA also stated that a new source would additionally be subject to the applicable provisions under Subpart U as specified by proposed Section 217.415. PC1 at 2.

**POST-HEARING COMMENTS OF THE ILLINOIS
ENVIRONMENTAL REGULATORY GROUP**

IERG stated that it supports the Board taking action to resolve the longstanding uncertainty facing the regulated community in light of the USEPA’s discontinuation of the federal NO_x Trading Program. PC2 at 1. Specifically, IERG agreed with the revisions to the proposal as described in the IEPA’s post-hearing comments and encouraged the Board to incorporate those revisions into the proposal for first-notice. *Id.* IERG stated that these revisions adequately address IERG’s concerns raised at hearing. *Id.* at 2.

DISCUSSION

The IEPA's proposal stated that the main purpose of the amendments "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." SR at 4. The IEPA noted that the USEPA replaced the NO_x SIP Call Trading Program with the CAIR program and is no longer administering the former. *Id.* The IEPA proposed "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." *Id.* The IEPA stated that the provisions "will remain in effect for violations that occurred in control periods prior to 2009." *Id.* The IEPA also stated that these amendments will prevent confusion and delete requirements for a program that is no longer being administered by the USEPA. *Id.*

Agency Outreach

The IEPA submitted this proposal after multiple discussions with IERG. SR at 6. The IEPA did not believe that there were any significant issues identified by interested parties. *Id.*

Technical Feasibility and Economic Reasonableness

The IEPA stated that these amendments were 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). SR. at 4. The IEPA did not believe that these amendments would impose any new requirements or costs on affected sources. *Id.* at 4-5. The IEPA therefore stated that the proposal is technically feasible and economically reasonable. *Id.* at 5.

In a letter dated October 26, 2010, the Board requested that the Department of Commerce and Economic Opportunity conduct an economic impact study of the Agency's rulemaking proposal. *See* 415 ILCS 5/27(b) (2008). On December 7, 2010, a letter from the DCEO respectfully declined the request, stating that the department was unable to undertake such a request at the time. At the second hearing, the hearing officer noted the Board's request to the DCEO and the response to it. February 17, 2011 Hearing Transcript (Tr. 2) at 5. No participant at the hearing offered testimony regarding the DCEO's response. Tr. 2 at 6.

The Board concurs with the Agency that compliance with the proposed amendments does not impose any new technical requirements and that the proposal is economically reasonable. In an order dated May 19, 2011, the Board proposed the Agency's proposal with the revisions discussed in this opinion for first-notice publication.

CONCLUSION

The Board proposes to update its holding and trading provisions located at 35 Ill. Adm. Code Part 217.Subpart U. This second notice proposal incorporates changes recommended by

JCAR following the Board's first notice publication. In its order below, the Board directs the Clerk to file the proposed amendments with JCAR for second notice review.

ORDER

The Board directs the Clerk to file the following proposed amendments for second notice review with the Joint Commission on Administrative Rules. Proposed additions are underlined, and proposed deletions appear stricken.

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	
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
 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_x CONTROL AND TRADING PROGRAM FOR
SPECIFIED NO_x GENERATING UNITS

Section	
217.450	Purpose
<u>217.451</u>	<u>Sunset Provisions</u>
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
217.712	Reporting and Recordkeeping

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 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
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 _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].

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. 14271, 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. 7391, effective April 22, 2011; amended in R11-08 at 35 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 217.454(a) and (b) and 217.456(c), (e)(1)(B) through (D), and (e)(2), 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 these subsections. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at 35 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 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 opinion and order on August 4, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board