

## **Board Adopts Second Notice Proposal to Sunset Nitrogen Oxide Trading Program Provisions for Electric Generating Units**

On September 17, 2009, the Illinois Pollution Control Board adopted a second notice proposal for review by the Joint Committee on Administrative Rules under the Illinois Administrative Procedure Act. In the Matter of: Nitrogen Oxide (NO<sub>x</sub>) Trading Program Sunset Provisions for Electric Generating Units (EGUs): New 35 Ill. Adm. Code 217.751 (Sept. 17, 2009). After two public hearings, the Board adopted a second notice proposal identical to the May 7, 2009 first notice proposal published at 33 Ill. Reg. 8880 (June 26, 2009).

The Illinois Environmental Protection Agency (IEPA) filed its proposal with the Board on April 21, 2009. The proposal would sunset the provisions of the Nitrogen Oxides (NO<sub>x</sub>) Trading Program rules for electrical generating units (EGUs). IEPA has requested that the Board complete the rulemaking before the end of November 2009.

In its statement of reasons, the IEPA states that Illinois adopted both the NO<sub>x</sub> rules at 35 Ill. Adm. Code Part 217 and the Clean Air Interstate Rule (CAIR) at 35 Ill. Adm. Code Part 225 after adoption of similar rules by the United States Environmental Protection Agency (USEPA). USEPA has approved both sets of rules for inclusion in the State Implementation Plan (SIP) for ozone attainment. As do the USEPA rules, the CAIR provisions as set forth in 35 Ill. Code Part 225.Subpart E include a trading program for control of NO<sub>x</sub> emissions during the ozone season that replaces the provisions in Part 217.Subpart W for EGUs beginning with the 2009 control period (May 1 through September 30) and thereafter.

But, due to a federal court ruling concerning the federal CAIR rules in *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008), USEPA must take additional action concerning its rules. To solve the problem, in 40 CFR 51.123(bb)(1)(i), USEPA has provided that states such as Illinois with approved CAIR programs may revise their applicable SIP so that the provisions of the NO<sub>x</sub> SIP Call Trading Program do not apply to affected EGUs.

IEPA's proposal requesting the Board to amend the Illinois rules is the first step to revision of the SIP. IEPA states that EGUs must comply with two sets of duplicative administrative requirements for the 2009 ozone season and beyond: the Illinois Clean Air Interstate Rule (CAIR) requirements at Part 225 and the Illinois NO<sub>x</sub> Trading Program at Part 217. To address and remove the duplication, the Board proposes to sunset the provisions of the NO<sub>x</sub> Trading Program, by adding a new Part 217.751 to sunset the rules beginning with the 2009 ozone control season.

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. Hard copies may be obtained for \$.75 per page from the Clerk's office

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