

JAN 09 2001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

PROPOSED NEW 35 ILL. ADM. CODE 217, SUBPART U,)
NOX CONTROL AND TRADING PROGRAM FOR)
SPECIFIED NOX GENERATING UNITS, SUBPART X,)
VOLUNTARY NOX EMISSIONS REDUCTION PROGRAM,)
AND AMENDMENTS TO 35 ILL. ADM. CODE 211)

R01-17
(Rulemaking-Air)

P.c. #1

NOTICE

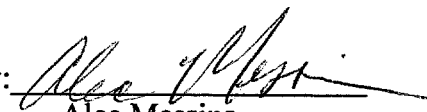
TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

Bobb A. Beauchamp, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the COMMENTS OF THE ILLINOIS EPA by the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Alec Messina
Assistant Counsel
Division of Legal Counsel
Bureau of Air

DATED: January 8, 2001

1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

RECEIVED

CLERK'S OFFICE

JAN 09 2001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

PROPOSED NEW 35 ILL. ADM. CODE 217, SUBPART U,)
NOX CONTROL AND TRADING PROGRAM FOR)
SPECIFIED NOX GENERATING UNITS, SUBPART X,)
VOLUNTARY NOX EMISSIONS REDUCTION PROGRAM,)
AND AMENDMENTS TO 35 ILL. ADM. CODE 211)

R01-17
(Rulemaking-Air)

COMMENTS OF THE ILLINOIS EPA

The Proponent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA or Agency), by its attorney, Alec Messina, hereby submits the following comments on the above-titled proposal following completion of hearings in this matter. The Illinois EPA requests that the Illinois Pollution Control Board (Board) adopt the proposal as submitted and as proposed to be amended by the Illinois EPA in its Errata Sheet and Motion to Amend, submitted on December 15, 2000, and as set forth herein. The Illinois EPA further requests that the Board make no further substantive revisions to the rule.

PURPOSE OF PROPOSAL

On October 14, 2000, the Illinois EPA proposed amendments to Part 217 and Part 211 of the Board's air pollution control regulations to control the emissions of nitrogen oxides (NOx) from certain specified fossil fuel-fired stationary boilers, combustion turbines, and combined cycle systems, and to obtain voluntary reductions of emissions of NOx from other specified sources for the purpose of transferring NOx allowances created by those reductions, during the control period specified by the so-called NOx SIP Call promulgated on October 27, 1998. *See* 63 Fed. Reg. 57,356 (October 27, 1998). The proposed amendments are intended to satisfy a portion of Illinois' obligation under the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (CAA) to submit

a State Implementation Plan (SIP) that addresses the requirements of the NOx SIP Call by implementing the NOx Trading Program, 40 CFR part 96, and determining source NOx allowance allocations as part of that program, and to meet the applicable requirements of Section 9.9 of the Environmental Protection Act. Included in this proposal are new Subpart U, NOx Control and Trading Program for Specified NOx Generating Units, 35 Ill. Adm. Code 217, Subpart U, new Subpart X, Voluntary NOx Emissions Reduction Program, 35 Ill. Adm. Code 217, Subpart X, and conforming amendments to Part 211.

As the Board is aware, on August 30, 2000, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) issued an order extending the deadline for full implementation of the NOx SIP Call from May 1, 2003, to May 31, 2004 (Order). See Michigan v. EPA, 213 F.3d 663 (D.C. Cir. 2000). As a result of this Order, the Illinois EPA proposed additional revisions to the proposal in its Motion to Amend. Since USEPA has not announced how it intends to respond to the Order, Illinois EPA is not proposing any further revisions to the proposal at this time with regard to this matter, although the Agency notes that it may be required to propose revisions in the future as necessary to address any action by USEPA regarding the Order.

The Illinois EPA has discovered testimony that should be clarified from the second hearing conducted on December 20, 2000. Further, due to comments and testimony at the second hearing, the Agency seeks to modify this proposal. As a result, the Illinois EPA offers the following comments.

AGENCY RESPONSE TO TESTIMONY

At the second hearing, Mr. Marder asked that the Board strike the language of the Agency's proposal that would prohibit post-1995 units from utilizing the provisions of Subpart

X. *See* December 20, 2000 Transcript p. 17, lines 2-4. It is the Agency's position that the omission or striking of this language would create functional problems for this program.

Functionally speaking, Subpart X represents a shift from the non-trading portion of the statewide NOx budget to the trading portion. To effectuate such a shift, there must be a clearly defined universe of sources from where allowances can be shifted. If that universe is constantly expanding, it becomes very difficult to show with certainty what effect there has been upon the statewide budget.

Further complicating matters, post-1995 units will not be in the inventory and thus will not have a baseline. To ensure the integrity of this program, determining the baseline is essential. The NOx SIP Call set statewide budgets based on a 1995 inventory, and requires each state to demonstrate that it has met this budget triennially, but it does not require controls or emission limitations on all NOx emitting units, nor does it limit the construction of new sources of NOx. In order to support our position that budget shifting should occur outside of the opt-in provisions of the NOx SIP Call that require part 75 monitoring, the Agency believes it is essential to limit participation in the program to units that were included in setting the budget and thus have an established baseline set in the statewide budget, i.e., those that commenced operation before January 1, 1995.

Again at the second hearing, Mr. Marder asked that the Board strike the language of the Agency's proposal requiring the retirement of 20% of the emissions reductions generated by Subpart X. *See* December 20, 2000 Transcript p. 18, lines 22-24. The rationale for this request is detailed in the pre-filed testimony, but is essentially based on the following three points: with regards to restricted-operation units, the difference in validity between Part 75 monitoring and other monitoring protocols cannot be 20%; with regards to shut-down units, there is no margin of

error in determining the emission reduction; and other programs, notably Illinois' Emissions Reduction Market System (ERMS), does not require Part 75 monitoring. *See* Pre-Filed Testimony of Sidney M. Marder pp. 7-8.

The Agency recognizes the difficulty in quantifying the difference between the AP-42 emission factors, upon which the statewide budget is in part based, and part 75 monitoring. As discussed at the second hearing, there is no mathematical calculation that would quantify the difference in emissions calculations between AP-42 factors and part 75 monitoring. However, twenty percent is not a number that is either grossly high or overstated. A source could always elect to opt-in and verify its emissions through part 75 monitoring if it believes that the 20% reduction from an established baseline is too high.

In addition, the USEPA clearly envisioned that the statewide budget would fluctuate. Some units would shut down and retire, while others would grow. Subpart X, however, takes those older units that will naturally retire and allows them to shift their allowances to units that continue to operate. By removing this element and keeping those allowances active, the statewide budget will not see the natural reductions USEPA anticipates will occur. The Agency therefore felt that some percentage had to be retired for air quality to offset the loss of reductions that the statewide budget anticipates.

In his testimony, Mr. Marder, contends that even if the Agency believes that a 20% reduction is necessary to account for the difference between Part 75 monitoring and other bases used to set the unit's baseline, i.e., AP-42 factors, this retirement is not necessary for shut down units, especially those units included in setting the budgets, i.e., those that commenced operation after January 1, 1995. The Agency disagrees. The same considerations of growth and retirement of units in setting the statewide budget for these sectors are even more applicable when

addressing shut down units. USEPA in setting the statewide budgets using the EGAS model clearly envisioned that older less efficient units would be replaced with larger, more efficient units.

Furthermore, Mr. Marder's reliance upon ERMS as a measuring stick for this rulemaking is misplaced, as that program has very little in common with the NOx SIP Call rules. Even though it must be approved by USEPA, ERMS is a state program. Reductions in this state have little or no bearing upon similar programs in, for instance, New York or Tennessee. The rules before the Board in this proceeding, on the other hand, are part of a complex, federal regional program intending to address ozone transport in 23 jurisdictions. A ton reduction in Illinois must equal a ton reduction in the other 22 jurisdictions for this program to be effective. Also, the reason that the ERMS program does not contain part 75 monitoring provisions is not because the Agency did not find them necessary in those proceedings, but rather because ERMS regulates volatile organic materials emissions and part 75 monitoring only pertains to the monitoring of NOx emissions.

Finally, Mr. Marder asked at the second hearing that the Board insert language that would provide guidance regarding when production-shifting occurs. *See* December 20, 2000 Transcript p. 21, lines 5-16. In his pre-filed testimony, specific language was suggested by Mr. Marder to define "production shifting." *See* Pre-Filed Testimony of Sidney M. Marder p. 12. It is the Agency's position that this language, as well as the notion in general, does not add anything of use. As stated at the first hearing, it is the Agency's position that a determination with regards to this issue must be made on a case-by-case basis. *See* November 29, 2000 Transcript p. 50. Mr. Marder's proposal, while attempting to make the proposed provisions clearer, simply changes the question. Instead of asking whether production shifting is occurring, it asks whether a product or

service was previously produced. A case-by-case determination must still be made. As Board Member Melas recognizes, this determination is no easier than what the rules currently contain. *See* December 20, 2000 Transcript p. 35, lines 11-20.

Mr. Zavoda testified at the second hearing regarding the omission of one of the boilers from Appendix E of this proposal operated by LTV Steel. *See* December 20, 2000 Transcript p. 50, lines 16-24. Despite prior notice of the impending rulemaking and the units included in the budget, LTV Steel's boiler in question was not included in the statewide budget determined by USEPA and was, therefore, inadvertently omitted from Appendix E. LTV Steel requested at the second hearing a specific allocation, but suggests that this particular number be subject to USEPA approval. *See* December 20, 2000 Transcript p. 53, lines 5-10. It is the Agency's position that the inclusion of any number prior to approval by USEPA could cause additional problems with regard to approval of this rule as part of the State's SIP. Instead, the Agency suggests that Appendix E should be amended to include LTV Steel's Boiler 4B and, rather than a number, should include an asterisk referencing proposed Section 217.660(f). That Section states "[i]f USEPA adjusts the Subpart U NOx Trading Budget as to any individual budget unit, the Subpart U NOx Trading Budget shall not be adjusted pro-rata, and only the allowance allocation for that budget unit will be adjusted." This would allow the Agency to obtain a number from USEPA and to adjust Appendix E accordingly in a timely manner, without requiring a new rulemaking and without raising any of the concerns mentioned above. The Agency's suggested modification to Appendix E is included in Attachment A.

CORRECTION / CLARIFICATION OF AGENCY TESTIMONY

At the second hearing, Mr. Marder questioned whether a stack test, rather than part 75 monitoring, could be used to establish a baseline for a unit. *See* December 20, 2000 Transcript p.

88, lines 3-5. After the Agency's response that stack tests are discouraged because of the potential for bias regarding operating conditions, and generally are inappropriate for the purpose of determining a baseline, Mr. Marder asked whether recently adopted regulations allowed the Agency to request a unit to submit a test plan. *See* December 20, 2000 Transcript p. 89, lines 7-10. Mr. Romaine answered yes to this question. However, as discussed below, this answer was misleading.

The Agency presumes that Mr. Marder is referring to New Part 283, General Procedures for Emissions Tests Averaging, which allows the Agency to request a test plan when a unit intends to average stack test results. 35 Ill. Adm. Code 283.220(b)(1). These rules, however, would not allow the Agency to request the submission of a test plan when a unit tests for the purpose of determining a baseline; these rules are only applicable when the unit is testing for "the purpose of determining the compliance of an emission unit with an applicable limitation, standard, or permit condition." 35 Ill. Adm. Code 283.120.

MODIFICATION OF AGENCY PROPOSAL

In the Agency's Errata Sheet and Motion to Amend submitted to the Board, the Agency requested that the definition of "Source" contained in Section 211.630 be amended in order to provide greater clarity to the language of the proposal. It was the intention of the Agency to modify the definition so that it was identical to the definition of "source" contained in Section 39.5 of the Act. The definition as included in the Errata Sheet and Motion to Amend was not identical, as a few words and punctuation marks were inadvertently omitted. The Agency's suggested modifications are included in Attachment B.

At the second hearing, Board Member McFawn questioned whether the Agency's proposal could be made clearer by the addition of titles in certain sections, subsections, and

paragraphs. See December 20, 2000 Transcript p. 72, lines 8-15, and p. 73, line 16-23. The Agency's suggested modifications are included in Attachment C.

CONCLUSION

As stated in the Statement of Reasons filed with this proposal, the U.S. Court of Appeals for the D.C. Circuit had given States until October 28, 2000, to submit their SIPs to satisfy the NO_x SIP Call. The Agency met this submittal date to USEPA by requesting the parallel processing of this proposal and committed to submitting a final adopted rule at the conclusion of this proceeding. This proposal, upon adoption, will satisfy a portion of these NO_x SIP Call requirements.

Delay in this matter could result in sanctions provided by the CAA, including the withholding of highway funds pursuant to Section 179(b)(1) (42 U.S.C. § 7509(b)(1)) or the imposition of at least a 2:1 offset requirement on new and modified sources or emission units for which a permit is required under Part D of the CAA (42 U.S.C. § 7509(b)(2))(New Source Review). However, should the Administrator find the State lacking in good faith in working towards compliance, both sanctions shall apply until such time as the State achieves compliance. 42 U.S.C. § 7509(a).

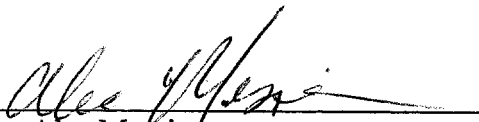
USEPA has already published in the Federal Register proposed Federal Implementation Plans (FIPs) for all States subject to the NO_x SIP Call to ensure that States timely meet the requirements of that rulemaking. 63 Fed. Reg. 56,393 (October 21, 1998) (to be codified at 40 CFR parts 52 and 97). USEPA has also stated that it intends to take final rulemaking action on the FIP promptly after the submittal deadline should a State fail to adopt and submit an approvable SIP revision in response to the NO_x SIP Call. *Id.* at 56,396.

For the reasons stated above, the Illinois EPA requests that the Board make no

substantive revisions to the proposal not addressed in the Motion to Amend or addressed herein,
and adopt the proposal as so modified.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Alec Messina
Assistant Counsel
Division of Legal Counsel
Bureau of Air

DATED: January 8, 2001

1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Attachment A

LTV STEEL COMPANY

031600AMC [UNIT DESIGNATION] BOILER NO. 4B

*

*

* Pursuant to Section 217.660(f), Column 4 and Column 5 will be adjusted at such time as USEPA makes an allocation for LTV Steel's Boiler No. 4B.

Attachment B

The definition of Source, Section 211.6130, should read:

Except as provided below, "Source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and that are under common control of the same person (or persons under common control) belonging and that belongs to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent property properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987 (incorporated by reference in 35 Ill. Adm. Code 218.112 and 219.112), or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility as defined in Section 39.5 of the Environmental Protection Act, 415 ILCS 5/39.5. The determination as to whether any group of stationary sources are located on contiguous or adjacent properties, and/or are under common control, and/or or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.

~~For the purposes of 35 Ill. Adm. Code 217, Subparts T, U, V, W and X, "source" means any stationary source (or any group of stationary sources) located on one or more contiguous or adjacent properties that are under common control of the same person (or persons under common control) and that belong to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987 (incorporated by reference in 35 Ill. Adm. Code 218.112 and 219.112), or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility. The determination whether any group of stationary sources are located on adjacent or contiguous properties, are under common control, or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.~~

Attachment C

Section 217. 656 Compliance Requirements

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

* * *

d) NOx requirements/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 NOx emissions for the control period (rounded to the nearest whole ton), as determined in accordance with Section 217.656(c) of this Subpart, 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 NOx emissions (rounded to the nearest whole ton) from all budget units at the source subject to this Subpart.

Section 217. 658 Permitting Requirements

* * *

b) Budget permit applications:

* * *

- 3) Federally Enforceable Status of Budget Permit. An application for a budget permit shall be treated as a modification of the source's existing federally enforceable permit, if such permit has been issued for the source, and shall be subject to the same procedural requirements. When the Agency issues a budget permit, it shall be incorporated into and become a segregable part of the source's existing federally enforceable permit.

RECEIVED
CLERK'S OFFICE

JAN 09 2001

STATE OF ILLINOIS
Pollution Control Board

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached COMMENTS OF THE ILLINOIS EPA upon the person to whom it is directed below by placing it with a courier for overnight delivery to the following:

TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

Bobb A. Beauchamp, Esq.
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

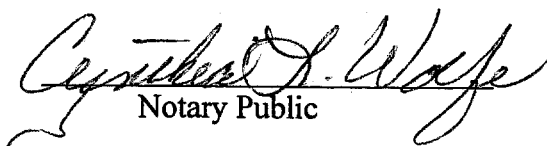
SEE ATTACHED SERVICE LIST

and to the attached Service List from Springfield, Illinois on January 8, 2001.

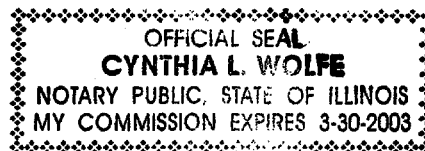


SUBSCRIBED AND SWORN TO BEFORE ME

This 8th day of January, 2001



Notary Public



SERVICE LIST

R01-17

Karen Bernoteit
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, IL 62701

Shannon Fulton
University of Illinois
101 S. Gregory
Urbana, IL 61801

Matthew Dunn
Attorney General's Office
James R. Thompson Center
100 West Randolph, 12th Floor
Chicago, IL 60601

Scott Miller
Kent Wanninger
Midwest Generation EME LLC
One Financial Place
440 S. LaSalle St., Suite 3500
Chicago, IL 60605

Katherine D. Hodge
Hodge & Dwyer
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

Scott Hanson
Cinergy
139 E. Fourth St.
Room 2603 AT
Cincinnati, OH 45202

Bryan Keyt
Bell, Boyd & Lloyd
70 West Madison Street
Suite 3300
Chicago, IL 60602

Emily Flescher
Clean Air Act Corporation
2 Adams Street
Suite 2
Charlestown, MA 02129

Robert Lawley
Chief Legal Counsel
Illinois Department of Natural Resources
425 South Second Street
Springfield, IL 62701-1787

Lee Cunningham
ADM
4666 Faries Parkway
Decatur, IL 62526

Brooke Peterson
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, IL 62701

Joe Griffiths
ENSR
27755 Diehl Road
Warrenville, IL 60555

James T. Harrington
Ross & Hardies
150 N. Michigan
Suite 2500
Chicago, IL 60601

William Murray
Office of Public Utilities
800 East Monroe
Springfield, IL 62757

Alan Jirik
Corn Products
6500 Archer Road
Bedford Park, IL 60501

David Rieser
Ross & Hardies
150 N. Michigan
Suite 2500
Chicago, IL 60601

Gabriel M. Rodriguez
Kevin B. Hynes
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606

Amy Clyde
Dynergy Midwest Generation, Inc.
2828 N. Monore Street
Decatur, IL 62526

Lenny Dupuis
Dominion Generation
5000 Dominion Blvd.
Glen Allen, VA 23060

Mary Schoen
Enron Corp.
P.O. Box 1188
Houston, TX 77251

Steven C. Whitworth
Ameren Services
1901 Chouteau Avenue
P.O. Box 66149 MC602
St. Louis, MO 63166-6149