

ILLINOIS POLLUTION CONTROL BOARD
February 2, 2006

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM:) R06-22
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking – Air)
PART 217)

ORDER OF THE BOARD (by T.E. Johnson):

On January 19, 2006, the Board received a rulemaking proposal submitted by the Illinois Environmental Protection Agency (Agency) pursuant to Section 27 and 28 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/27 and 28 (2004)). Included in this proposal are amendments to the regulations governing Nitrogen Oxide (NO_x) emissions found at 35 Ill. Adm. Code Part 217, Subparts A, T, U, and W. A motion to waive the requirements that an entire copy of the proposal be submitted to the Department of Natural Resources (IDNR) and that the Agency submit the original and nine copies of all documents upon which it relied, accompanied the petition.

The Agency proposes updates to Part 217 to reflect recent amendments made by the United States Environmental Protection Agency (USEPA) to the Code of Federal Regulations (C.F.R.) concerning several test methods and procedures, and by the Illinois General Assembly to Section 9.9 of the Act concerning the sale of NO_x allowances and the repeal of the stay provisions. Pet. at 19. The Agency proposes amendments intended to ensure that the NO_x budgets for both the Electrical Generating Units (EGU) and the non-EGUs are not reduced by low-emitters in a way that was not anticipated at the time the rules were originally adopted by the Board. *Id.* Finally, the Agency proposes clarifications to the dates and timing of allocations designed to simplify the administration of the NO_x Trading Program. *Id.* The Agency asserts that this proposal does not change the emission limits or require new control devices on affected sources. *Id.*

The Agency's proposal, including its statement of reasons and the full text of the proposed rule language, is available through the Clerk's Office in Chicago (312-814-3620) and on the Board's Web site (www.ipcb.state.il.us) using the Clerk's Office On-Line or "COOL."

The Board finds that the proposal satisfies the content requirements of the Act and the Board's procedural rules for rulemaking proposals. The proposal is accepted for hearing.

In its motion to waive filing requirements, the Agency first asserts that although the Board's regulations require that a regulatory proposal be served on the IDNR, the Agency contacted counsel for IDNR, and was informed that the Agency need not serve the IDNR if the Agency provided formal notice that the proposal was filed. Mot. at 1. The Agency attached a letter to the IDNR that purports to provide such formal notification. Pet. at 8-9. The Board grants the Agency's motion. A review of the record indicates that counsel for the IDNR has

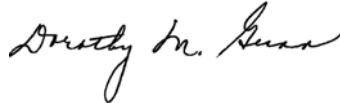
been notified of the proposal as asserted by the Agency. The requirement that the IDNR be served an entire copy of the proposal is hereby waived.

Next, the Agency seeks to submit fewer than the original and nine copies of all documents upon which it relied. As to the first group of four documents, materials to be incorporated by reference, the Agency has provided five copies. Mot. at 1-2. The Board finds that the five copies supplied is sufficient for the Board's needs and grants the requested waiver. The next group of 12 documents is a list of various statutes and rules published in the *Federal Register*, and citations to federal case dockets. The Agency has filed five copies of only two of these documents, both of which appeared in the *Federal Register*. As to the rest, the Agency proposes to file no copies. The Agency states that the rest "are readily accessible to or are within the possession of the Board". Mot. at 2. The Board agrees that the majority of the remaining documents are readily available to the Board. The Board grants the Agency's motion as to all of the remaining documents except those referenced in paragraph 3(h) and (m) of the Agency's motion.

The items referenced in paragraph 3(h) and (m) of the Agency's motion are citations to dockets before the United States Court of Appeals in the D.C. Circuit. The Board does not have ready access to such items, and directs the Agency to file five copies of each document therein relied upon by the Agency. The assigned hearing officer is directed to proceed expeditiously under the rulemaking provisions of the Act (415 ILCS 5/27, 28 (2004)) and the Board's procedural rules. 35 Ill. Adm. Code 102.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board