

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2006

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

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

This matter is before the Board on a February 21, 2006 motion to supplement the rulemaking proposal filed by the Illinois Environmental Protection Agency (Agency). Also pending before the Board is a motion for expedited review, and initial comments both filed by the Illinois Environmental Regulatory Group (IERG) on March 13, 2006.

BACKGROUND

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.

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 Board accepted the proposal for hearing on February 2, 2006. In that order, the Board partially granted a motion to waive filing requirements, waiving the requirement that the Department of Natural Resources (DNR) be served an entire copy of the proposal, and the requirement that the Agency submit the original and nine copies of all documents upon which it relied accompanied the petition. However, the Board also directed the Agency to file five copies of certain documents relied upon by the Agency in the preparation of the proposal not readily accessible to the Board.

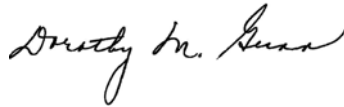
DISCUSSION

In its motion to supplement the rulemaking proposal, the Agency moves the Board to accept two documents. The first document is a petition for review filed in the State of North Carolina v. EPA, No. 05-1244 (D.C. Cir.) on July 8, 2005; the second document is the decision entered in State of West Virginia v. EPA, 362 F.3d 861 (D.C. Cir. 2004). Mot. at 2. No response to the motion to supplement has been received by the Board. The motion to supplement is granted, and the Board hereby accepts the documents as provided by the Agency as part of the record.

The IERG motion for expedited review was filed on March 13, 2006. The Board allows 14 days after service of a motion for a response. *See* 35 Ill. Adm. Code 101.500(d). The Board will reserve ruling on the motion for expedited review until the response time has lapsed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 16, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board