

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
NITROGEN OXIDES EMISSIONS FROM) R08-19
VARIOUS SOURCE CATEGORIES:) (Rulemaking – Air)
AMENDMENTS TO 35 ILL. ADM. CODE)
PARTS 211 AND 217)


NOTICE

TO: John Therriault
Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board MOTION FOR EXPEDITED REVIEW, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: March 19, 2009

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

**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MOTION FOR EXPEDITED REVIEW

NOW COMES Proponent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, and pursuant to 35 Ill. Adm. Code 101.512, respectfully submits this Motion for Expedited Review (“Motion”). In support of its Motion, the Illinois EPA states as follows:

1. On May 9, 2008, the Illinois EPA filed a proposal with the Illinois Pollution Control Board (“Board”) to amend 35 Ill. Adm. Code Parts 211 and 217 to control the emissions of nitrogen oxides (“NO_x”) from various source categories such as industrial boilers, process heaters, glass melting furnaces, cement kilns, lime kilns, furnaces used in steel making and aluminum melting, and fossil fuel-fired stationary boilers. This proposed rulemaking is intended to meet certain obligations of the State of Illinois under the federal Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et seq.*; specifically, to satisfy Illinois’ obligation to submit a State Implementation Plan (“SIP”) to address the requirements under Sections 172 and 182 of the CAA for major stationary sources of NO_x in areas designated as nonattainment with respect to National Ambient Air Quality Standards (“NAAQS”). *See*, 42 U.S.C. §§ 7502 and 7511a. The Board held hearings on this proposal on October 14, 2008, in Springfield, on December 9 and 10, 2008, in Chicago, and on February 3, 2009, in Edwardsville.

2. Under Section 110 of the CAA and related provisions, states are required to submit, for the United States Environmental Protection Agency’s (“USEPA”) approval, SIPs that provide for the attainment and maintenance of standards established by USEPA through control

programs directed to sources of the pollutants involved. 42 U.S.C. §7410. The CAA also provides for the State to address emissions sources on an area-specific basis through such requirements as reasonably available control measures (“RACM”) and reasonably available control technology (“RACT”). *See*, 42 U.S.C. §§7502 and 7511a. For each nonattainment area, the CAA requires the State to demonstrate that it has adopted “all reasonably available control measures as expeditiously as possible (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.” 42 U.S.C. § 7502(c)(1).

3. Volatile organic compounds and NO_x are the primary precursors to the formation of ozone. Additionally, NO_x is a precursor to the formation of fine particulate matter (“PM_{2.5}”).

4. USEPA designated two areas in Illinois as nonattainment for the 8-hour ozone and PM_{2.5} NAAQS, respectively. Such designations triggered requirements under the CAA for adopting regulations that reduce emissions sufficiently to demonstrate attainment of the standards.

5. Under Section 172(c)(1) of the CAA, states with nonattainment areas are required to submit, in part, SIPs that provide for the adoption of RACM for stationary sources in all nonattainment areas as expeditiously as possible. 42 U.S.C. § 7502(c)(1).

6. A subset of RACM is the RACT requirements. RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See*, 44 *Fed. Reg.* 53762 (September 17, 1979). Section 182(b)(2) of the CAA requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above.

7. In Illinois, there are two areas designated as nonattainment (moderate) for the 8-hour ozone standard. The first is the Chicago-Gary-Lake County, IL-IN designated area, which includes Cook County, DuPage County, Grundy County (partial—Goose Lake and Aux Sable Townships), Kane County, Kendall County (partial—Oswego Township), Lake County, McHenry County, and Will County. The second area is the St. Louis, MO-IL designated area, which includes Jersey County, Madison County, Monroe County, and St. Clair County. 40 CFR §81.314.

8. In Illinois, there are two areas designated as nonattainment for the PM_{2.5} standard, the first being the Chicago-Gary-Lake County, IL-IN designated area, which includes Cook County, DuPage County, Grundy County (partial—Goose Lake and Aux Sable Townships), Kane County, Kendall County (partial—Oswego Township), Lake County, McHenry County, and Will County, and second being the St. Louis, MO-IL designated area, which includes Madison County, Monroe County, Randolph County (partial—Baldwin Village), and St. Clair County. 40 CFR §81.314.

9. States, such as Illinois, with nonattainment areas classified as moderate or above for the 8-hour ozone NAAQS were required to submit by September 15, 2006, a SIP demonstrating that sources specified under the CAA were subject to RACT requirements. *See, Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard; Final Rule, 70 Fed. Reg. 71612, 71652 (November 29, 2005).*

10. By letter dated March 17, 2008, the USEPA notified the State of Illinois that it had failed to make required submissions under the CAA, and that USEPA would be publishing a rulemaking notice to announce this finding. *See, attached Letter from Mary A. Gade, Regional Administrator, USEPA, to Douglas P. Scott, Director, Illinois EPA.*

11. On March 24, 2008, USEPA made a finding that Illinois, among other states, failed to make a RACT submittal required under Part D of Title I of the CAA for its two moderate nonattainment areas. *See*, 73 *Fed. Reg.* 15416 (March 24, 2008). Such finding starts the 18-month emission offset sanctions clock and 24-month highway funding sanctions clock under Section 179(a) and (b) of the CAA and the 24-month clock for the promulgation by USEPA of a Federal Implementation Plan (“FIP”) under Section 110(c) of the CAA. 42 U.S.C. §§ 7509(a) and (b) and 7410(c).

12. On March 12, 2009, to ensure that the CAA’s requirements are met in a timely manner and to avoid adverse consequences of failure to do so, the USEPA informed Director Douglas P. Scott of the Illinois EPA that the State needs to address the findings of failure to submit the required ozone SIP elements previously identified by the USEPA in the March 17, 2008, letter and in the March 24, 2008, final rule (73 *Fed. Reg.* 15416). *See*, attached letter from Bharat Mathur, Acting Regional Administrator, USEPA, Region 5, to Douglas P. Scott, Director, Illinois EPA (“March 12, 2009, letter”).

13. By this letter, USEPA further reaffirmed that the final rule started a sanctions clock that, if not terminated or stayed by USEPA, will result in the implementation of several sanctions in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas, as early as September 2009. *Id.* USEPA sent this letter “to request expedited action” by the Illinois EPA and the Board “to complete the ozone SIP development and adoption process for the missing SIP elements * * * to avoid implementation of sanctions.” *Id.*

14. To date, the Illinois EPA has submitted all of the SIP elements identified in the March 17, 2008, letter and the March 24, 2008, final rule, except for the NO_x RACT rules for the Chicago ozone nonattainment area and Metro-East St. Louis ozone nonattainment area.

15. USEPA reiterates in the letter that if, by September 24, 2009, Illinois has not submitted all of the required SIP elements, pursuant to Section 179(a) of the CAA and 40 CFR 52.31, the new source offset sanction, identified in Section 179(b)(2) of the CAA, will apply in the Chicago and Metro-East St. Louis areas. *See*, March 12, 2009, letter. The increased new source emissions offset ratio (2:1) will make it more difficult for new sources to locate in the nonattainment areas. *Id.*

16. Furthermore, if by six months after imposition of the first sanction, Illinois has not submitted the required SIP elements, highway sanctions will be implemented in accordance with 40 CFR 52.31. *Id.* This may adversely affect Federal funding of new highway projects, including highway project funding under the American Recovery and Reinvestment Act of 2009, and would restrict the types of highway projects that the State and local governments can implement. *Id.*

17. Finally, if by March 24, 2010, Illinois has not submitted the required SIP elements and USEPA has not approved these SIP revisions, Section 110(c) of the CAA provides for USEPA to promulgate FIPs to replace the missing SIP elements. *Id.* If it is necessary for USEPA to promulgate a FIP, USEPA may pay the costs of developing and promulgating this plan with section 105 funds that would otherwise be given to Illinois. *Id.*

18. USEPA is very concerned that the time available to avoid the implementation of sanctions is very short. *Id.*

19. The Illinois EPA must ensure that sanctions are not imposed in the two nonattainment areas in Illinois.

20. Accordingly, if this proposed rulemaking is not promulgated and a complete submittal made to USEPA by September 24, 2009, the offset sanction will apply in the two nonattainment areas. If, by six months after the offset sanction is imposed, USEPA has not

affirmatively determined that Illinois has made a complete submission, then the highway funding sanction will apply in the two nonattainment areas.

21. For the reasons stated above, and due to the impending date of September 24, 2009, so as to avoid the imposition of sanctions, the regulations need to be adopted in an expedited manner.

22. In light of the foregoing, it is necessary to expedite review in this matter.

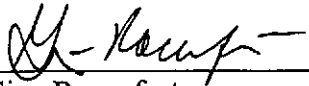
23. Therefore, the Illinois EPA requests that the Board proceed to First Notice under the Illinois Administrative Procedure Act, 5 ILCS 100/1-1 *et seq.*, as expeditiously as possible.

24. The Illinois EPA believes that the Board possesses the information necessary for the Board to proceed to First Notice in this rulemaking having had three hearings on this proposal. In the event that more information is needed, the Illinois EPA will fully cooperate to expeditiously provide the same to the Board and its hearing officer.

25. As required by 35 Ill. Adm. Code Section 101.512, this Motion is accompanied by an Affirmation attesting that the facts cited herein are true.

WHEREFORE, for the reasons set forth above, the Illinois EPA respectfully requests that the Board grant its Motion and expedite review in this matter.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

DATED: March 19, 2009

1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276
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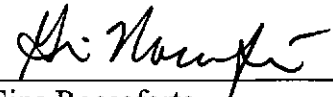
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AFFIRMATION

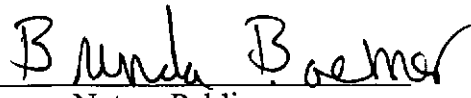
I, Gina Roccaforte, under oath, hereby state and affirm that I am an Assistant Counsel for the Illinois EPA and the facts cited in the foregoing Motion for Expedited Review are true and correct to the best of my information and belief.



 Gina Roccaforte
 Assistant Counsel
 Division of Legal Counsel

SUBSCRIBED AND SWORN TO BEFORE ME

This 19 day of March, 2009



 Notary Public





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



REPLY TO THE ATTENTION OF:

(R-19J)

Douglas P. Scott, Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19726
Springfield, Illinois 62794-9276

Dear Mr. Scott:

I am writing concerning submittals that the State of Illinois must make to comply with Clean Air Act (the Act) requirements to meet the 8-hour national ambient air quality standard for ozone. The Act requires States with areas that are designated nonattainment for the ozone national ambient air quality standard to develop a State Implementation Plan (SIP) describing how the State will attain and maintain the ozone standard.

Part D of title I of the Act outlines all of the required elements of an approvable SIP for areas designated nonattainment. The requirements include but are not limited to, reasonable further progress, Volatile Organic Compounds (VOC) and Nitrogen Oxides (NOx) Reasonably Available Control Technology (RACT), and an attainment demonstration. These submittals were due on September 15, 2006 (VOC RACT for existing, pre-2006, Control Technique Guideline (CTG) and major non-CTG source categories and NOx RACT), and June 15, 2007 (all other ozone SIP elements).

While we appreciate the work that the Illinois Environmental Protection Agency has done to meet its obligations under the Act, not all of the required SIP elements have been submitted. Based on our discussions with your staff, we believe that Illinois will complete and submit the required SIP elements expeditiously and well before any findings discussed here result in any adverse consequences for the State. In particular, we note the very good progress the State has made through its efforts, as a participant in the Lake Michigan Air Directors Consortium, to complete the ozone attainment demonstration and reasonable further progress plans for the Chicago area.

Nonetheless, we consider the required SIP elements to be a high priority and by today's letter, EPA is notifying Illinois that, pursuant to section 179(a) of the Act, EPA is making findings of failure to submit for the following areas and SIP requirements:

Chicago Area

- Reasonable Further Progress Plan
- Attainment Demonstration
- VOC RACT for Existing CTG and Major Non-CTG Sources
- NOx RACT

Metro-East St. Louis Area - NOx RACT

EPA will shortly publish a rulemaking notice in the Federal Register announcing these findings, which will be effective upon publication of the notice. In general, findings are being made in those cases where a State failed to submit all or elements of a required SIP. Please be assured that we will continue to work closely with the Illinois Environmental Protection Agency to undertake all necessary efforts to ensure that the remaining submittals are made as soon as possible so that we can avoid the implementation of sanctions and the need to promulgate a Federal Implementation Plan (FIP).

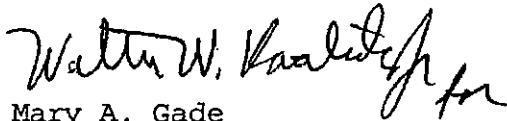
If, within 18 months of EPA's finding, Illinois has not submitted the missing elements of the SIP, pursuant to section 179(a) of the Act and 40 Code of Federal Regulations (CFR) section 52.31, the new source offset sanction identified in section 179(b) of the Act will apply in the affected areas. If Illinois still has not made a complete submission six months after the new source offset sanction is imposed, the highway sanction will apply in the affected areas in accordance with 40 CFR 52.31. In addition, section 110(c) of the Act provides that EPA promulgate a FIP no later than two years after a finding under section 179(a) if EPA has not approved the plan for which the finding was made.

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the findings, EPA finds that the State has made a complete submittal. In addition, EPA would no longer be obligated to promulgate a FIP if the State makes the required SIP submittals and EPA takes final action to approve the submittals within two years of the findings.

I also call your attention to the transportation conformity issues associated with certain aspects of these findings of failure to submit pursuant to EPA's transportation conformity rule (40 CFR 93.120(b)). The conformity status of the transportation plans and transportation improvement programs in the affected areas would lapse on the date that highway sanctions under section 179 are imposed, unless the State makes the required SIP submittals and EPA acknowledges this via a letter.

We are looking forward to working closely with Illinois to ensure that the Act's requirements are met in a timely manner without adverse consequences.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter W. K... for".

Mary A. Gade
Regional Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 12 2009

REPLY TO THE ATTENTION OF

R-19J

Douglas P. Scott, Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Dear Mr. Scott:

The State of Illinois needs to address the findings of failure to submit required ozone State Implementation Plan (SIP) elements previously identified by the U.S. Environmental Protection Agency in a March 17, 2008, letter and in a March 24, 2008, final rule (73 FR 15416). The final rule began a sanctions clock that, if not terminated or stayed by EPA, will result in the implementation of several sanctions in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas, as early as September 2009. I am sending this letter to request expedited action by the Illinois Environmental Protection Agency (IEPA) and the Illinois Pollution Control Board (IPCB) to complete the ozone SIP development and adoption process for the missing SIP elements (discussed below) to avoid implementation of sanctions.

Failure to submit the following SIP elements were identified in the March 17, 2008, letter and the March 24, 2008, final rule.

1. Chicago ozone nonattainment area:
 - a. an 8-hour ozone Reasonable Further Progress (RFP) plan
 - b. an 8-hour ozone attainment demonstration
 - c. Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT) rule certification (or new rules for source categories lacking existing RACT rules) for source categories covered by Control Technique Guidelines (CTGs) issued prior to September 15, 2006, or for major non-CTG sources
 - d. Nitrogen Oxides (NOx) RACT rules

2. Metro-East St. Louis ozone nonattainment area:
 - a. NOx RACT rules

The specific timing for the various sanctions that could be triggered if Illinois continues to fail to adopt and submit the required SIP elements are as follows.

If, by September 24, 2009, Illinois has not submitted all of the required SIP elements listed above (including final, adopted VOC and NOx RACT rules where applicable), pursuant to section 179(a) of the Act and 40 CFR 52.31, the new source offset sanction, identified in section 179(b)(2) of the Act, will apply in the Chicago and Metro-East St. Louis areas. The increased new source emissions offset ratio (2:1) will make it more difficult for new sources to locate in the nonattainment areas.

If, by six months after imposition of the first sanction, Illinois has not submitted the required SIP elements, highway sanctions will be implemented in accordance with 40 CFR 52.31. This may adversely affect Federal funding of new highway projects, including highway project funding under the American Recovery and Reinvestment Act of 2009, and would restrict the types of highway projects that the State and local governments can implement.

Finally, if by March 24, 2010, Illinois has not submitted the required SIP elements and EPA has not approved these SIP revisions, section 110(c) of the Act provides for EPA to promulgate Federal Implementation Plans (FIPs) to replace the missing SIP elements. If it is necessary for EPA to promulgate a FIP, EPA may pay the costs of developing and promulgating this plan with section 105 funds that would otherwise be given to Illinois.

EPA is very concerned that the time available to avoid the implementation of sanctions in this case is very short. We look forward to working closely with Illinois to ensure that the Act's requirements are met in a timely manner and to avoid adverse consequences of failure to do so. If you have any questions about this issue, please contact me or Cheryl Newton at 312-353-6730.

Sincerely,



Bharat Mathur
Acting Regional Administrator

cc: Laurel Kroack, Director
Bureau of Air, Illinois EPA

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)
)

CERTIFICATE OF SERVICE


I, the undersigned, an attorney, state that I have served electronically the attached
MOTION FOR EXPEDITED REVIEW, upon the following person:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

and electronically to the following persons:

SEE ATTACHED SERVICE LIST

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,



Gina Roccaforte
Assistant Counsel
Division of Legal Counsel

Dated: March 19, 2009

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Electronic Filing - Received, Clerk's Office, March 19, 2009
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