

ILLINOIS POLLUTION CONTROL BOARD
May 13, 2008

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MAY 13 2009

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
NITROGEN OXIDE (NO_x) TRADING) R 09-20
PROGRAM SUNSET PROVISIONS FOR) (Rulemaking - Air)
ELECTRIC GENERATING UNITS (EGUs):)
NEW 35 ILL. ADM. CODE 217.751)

NOTICE OF HEARING

DATES, TIMES, PLACES:

Thursday, June 18, 2009, 1:00 p.m.

Thursday, July 23, 2009 1:00 p.m.

JAMES R. THOMPSON CENTER
Room 11-512
100 W. Randolph—Room 11-512
Chicago, IL 60601

IEPA OFFICE BUILDING
Room 1244N, First Floor
1021 N. Grand Avenue East
Springfield, IL 62794

PURPOSE OF HEARING:

Merit and economic

ATTENDING BOARD MEMBER:

Dr. Shundar Lin

HEARING OFFICER:

Kathleen M. Crowley

HEARING OFFICER ORDER

Procedural History

On April 21, 2009, the Illinois Environmental Protection Agency (Agency) filed a proposal for rulemaking under Sections 10, 27 and 28 of the Environmental Protection Act (Act), 415 ILCS 5/10, 27, 28 (2006). The proposal would add a single new section, 35 Ill. Adm. Code 217.751 to 35 Ill. Adm. Code 217.Subpart W. Beginning with any control period in 2009, the new section would “sunset”, or render inapplicable, the provisions of the Nitrogen Oxides (NO_x) Trading Program for electrical generating units (EGUs) found at 35 Ill. Adm. Code 217.Subpart W. But, the Agency proposes that the provisions 35 Ill. Adm. Code 217.Subpart W will remain in effect for violations that occurred in control periods prior to 2009.

In a May 7, 2009 order, the Board accepted the proposal for hearing. The Board also authorized publication of the proposal (without comment on the proposal’s merits) in the Illinois Register as required by the Illinois Administrative Procedure Act (IAPA), 5 ILCS 100 et seq. (2006).

In compliance with the Americans With Disabilities Act and other applicable federal and State laws, the hearings will be accessible to individuals with disabilities. Persons requiring auxiliary aids should contact John T. Therriault, Assistant Clerk of the Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, at telephone number (312) 814-3620, or TDD number (312) 814-6032, at least five days before the particular hearing.

On May 13, 2009, as required under Section 27(b)(1) of the Act, 415 ILCS 5/27(b)(1)(2006), the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct a study of the economic impact of the proposed rules. The Board requested a response no later than June 30, 2009, so that the economic impact study (EcIS) issue could be addressed at the July 23, 2009 hearing.

The Hearings

The Board will conduct two hearings in order to allow the proponent and any other interested participants the opportunity to present testimony on the merits and economic impact of the rulemaking proposal. At hearing, all persons who testify will be sworn in and subject to questioning. The Board will also receive any testimony on any EcIS conducted by DCEO on the proposed rules or on DCEO's decision not to perform an EcIS.

As indicated above in the notice of hearings, the first hearing will begin on Thursday, June 18, 2009 and will continue until the day's business is completed, but in no event later than 5:00 p.m. The second hearing is scheduled to begin Thursday, July 23, 2009 and will and will continue, continue until the day's business is completed, but in no event later than 4:30 p.m.

Pre-Filing Deadlines

Participants who intend to testify must pre-file their testimony and serve the testimony on the hearing officer and all persons on the Service List. Before filing pre-filed testimony or any other document with the Clerk, please check for the most recent version of the Service List with the hearing officer or the Clerk's Office.

Participants in the first hearing are directed to pre-file all of their testimony and any related exhibits no later than Friday, June 5, 2009. Under Section 27 of the Act (415 ILCS 5/27 (2006)), the first hearing is not limited to the testimony of the proponent. But, the hearing officer presently intends to allow the Agency as proponent to present the testimony of all of its witnesses before hearing the testimony of other participants. Therefore, any other person wishing to testify at the first hearing should also pre-file their by June 5, 2009. Participants wishing to testify at the second hearing are directed to pre-file all of their testimony and any related exhibits no later than Friday, July 10, 2009.

The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of this pre-filed testimony, and the Board's Clerk must therefore receive these documents before the close of business on the specified dates. However, pre-filed testimony and other documents maybe filed electronically though the Clerk's Office On-Line (COOL) from the Board's Web site at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Order of Hearings

All pre-filed testimony will be, entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of testimony will be allowed if a witness wishes to provide one

before responding to questions. Participants who do not pre-file testimony will be allowed to testify as time permits only after the conclusion of pre-filed testimony and questions based upon it. Similarly, any participant who wishes to offer a public comment will be allowed to do so as time permits at the close of pre-filed testimony and the questions based upon it. Consequently, any person wishing to testify at either of the two hearings is urged to pre-file their testimony in order to ensure that they have an opportunity to testify. In addition, the Board's procedural rules provide that "[t]he Board will accept written comments from any person concerning the proposed regulations during the first notice period." 35 Ill. Adm. Code 102.604.

The hearing scheduled to begin on June 18, 2009, will begin with the Agency's presentation of its case as the proponent. After the Agency has answered all questions from other participants, and if time permits before the conclusion of the first hearing, other persons who have pre-filed may testify. The Board has reserved sufficient time for each hearing and anticipates that any person who wishes to testify will have an opportunity for testimony and any cross-examination. In the event that any person who pre-files testimony for the first hearing cannot testify on June 18, 2009, because time does not allow it, that person will be given priority to testify on July 23, 2009.

The July 23, 2009 hearing will begin with any testimony from any participant who pre-filed testimony for the first hearing and who was not able to testify at that time. Participants who pre-filed testimony for the second hearing will then present that testimony. Any participant who wishes to offer a public comment at either hearing will be allowed to do so if time permits at the close of pre-filed testimony and the questions based upon it. Again, written public comments may be submitted to the Board. *See* 35 Ill. Adm. Code 102.604.

Finally, the hearing officer, upon agreement of the participants or upon motion to the hearing officer, may change the order of testimony at these hearings. *See* 35 Ill. Adm. Code 102.420, citing 35 Ill. Adm. Code 101.Subpart F.

Service and Notice Lists

The Service List for this rulemaking is the list of persons who wish to participate actively in this proceeding and receive not only the Board's opinions and orders but also other filings such as pre-filed testimony and public comments.

The Notice List includes participants who wish to receive only the Board's opinions and orders and hearing officer orders. The Board adopted the Part 217 NOx Trading Program Rules nearly 9 years ago in Proposed New 35 Ill. Adm. Code 217. Subpart W, The NOX Trading Program for Electrical Generating Units, and Amendments to 35 Ill. Adm. Code 211 and 217, R01-9 (Dec. 21, 2000). The R01-9 notice list began with each of the approximately 229 potentially affected EGUs who were part of the Board's service list in the R01-9 proceeding in which the Part 217 NOx Trading Program rules were adopted. This notice list is too dated to serve as the basis for the notice list here.

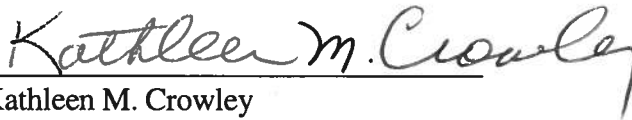
Instead, the Board will begin its notice list in this proceeding with the notice list in the still-pending, but currently inactive, docket which the Agency proposed to amend these rules: NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217, R06-22 (Feb. 2, 2006)(Agency proposal accepted for hearing).

While the Board will mail a copy of this hearing officer order to each of the entities on the R06-22 notice list, the Board will mail copies of any subsequent opinions and orders only to those who specifically indicate that they wish to remain on the Notice List for this proceeding. Any entity wishing to remain on the Notice List must provide the information requested in the form attached to this order as Attachment A and return the completed form to the Board by Friday, March 7, 2008. In order to clarify the record in this proceeding, Attachment B to this order contains the names and addresses of all of the entities to which the Board has mailed this first hearing officer order.

Interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number: R09-20. This electronic notice includes notice of the filing of documents that are not typically provided to persons on the Notice List. In addition, COOL provides links to documents filed with the Board, and those documents can be viewed, downloaded, and printed free of charge as soon as they are posted to the Board's Web site. For more information about the option of electronic notice or COOL, consult either the Board's Web site at www.ipcb.state.il.us or John Therriault, the Board's Assistant Clerk, at (312) 814-3629.

At the close of the second hearing, the hearing officer will set a date by which the record will close and all public comments must be submitted. *See* 35 Ill. Adm. Code 102.108. As the Board is aware that the Agency would appreciate Board decision making as soon as possible, the post-hearing comment period will not be lengthy unless unanticipated circumstances dictate otherwise.

IT IS SO ORDERED.



Kathleen M. Crowley
Hearing Officer, Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-6929 crowlek@ipcb.state.il.us

ATTACHMENT A

To Hearing Officer Order of May 13, 2009

**Nitrogen Oxide (NOx) Trading Program Sunset Provisions for Electric Generating Units
(EGU's): New 35 Ill. Adm. Code 217.751, R09-20**

I wish to remain on the Notice List in the Pollution Control Board rulemaking proceeding listed above:

Name

Organization or Company

Address

City, State, Zip

PLEASE RETURN THIS FORM BY MONDAY JUNE 1, 2009 TO:

Lynn Delaney

E-mail:
delaneylipcb.state.il.us

Fax:
312-814-3669

Mail:
100 W. Randolph St., Suite 11-500
James R. Thompson Center
Chicago, Illinois 60601

ATTACHMENT B

To Hearing Officer Order of May 13, 2009

**Nitrogen Oxide (NOx) Trading Program Sunset Provisions for Electric Generating Units
(EGU's): New 35 Ill. Adm. Code 217.751, R09-20**

Attachment B consists of the Service List from the Board's proceeding in NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217, R06-22, and begins on the next page:

R2009-020
 Rachel L. Doctors
 IEPA
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, IL 62794-9276

R2009-020
 Hodge Dwyer & Driver
 3150 Roland Avenue
 Post Office Box 5776
 Springfield, IL 62705-5776

R2009-020
 Matthew J. Dunn
 Office of the Attorney General
 Environmental Bureau North
 69 West Washington Street, Suite 1800
 Chicago, IL 60602

R2009-020
 Alec M. Davis
 Illinois Environmental Regulatory Group
 215 East Adams Street
 Springfield, IL 62701

R2009-020
 Kathleen C. Bassi
 Schiff Hardin, LLP
 6600 Sears Tower
 233 South Wacker Drive
 Chicago, IL 60606-6473

R2009-020
 Virginia Yang
 Illinois Department of Natural Resources
 One Natural Resources Way
 Springfield, IL 62702-1271