ILLINOIS POLLUTION CONTROL BOARD
May 21, 2009

IN THE MATTER OF:	)	
	)	
SECTION 27 PROPOSED RULES FOR	)	R07-19
NITROGEN OXIDE (NO_x) EMISSIONS	)	(Rulemaking - Air)
FROM STATIONARY RECIPROCATING	)	
INTERNAL COMBUSTION ENGINES AND	)	
TURBINES: AMENDMENTS TO 35 ILL.	)	
ADM. CODE SECTION 201.146 AND	)	
PARTS 211 AND 217	)	

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

Today the Board adopts for second notice a proposal to amend its regulations governing emission of nitrogen oxides (NO_x) (35 Ill. Adm. Code 201, 211, 217). On December 20, 2007, the Illinois Environmental Protection Agency (Agency or IEPA) filed a motion to proceed in this docket with an amended rulemaking proposal. The Board granted the motion on January 10, 2008. After conducting two public hearings on the amended proposal, the Board on September 16, 2008, adopted its first-notice opinion and order. *See* 32 Ill. Reg. 17035-17104.

This second-notice proposal intends to control NO_x emissions from engines and turbines located at 100 ton per year sources located in the Chicago and Metro East/St. Louis nonattainment areas with a capacity of 500 brake horsepower (bhp) or 3.5 megawatts (MW). In its motion to proceed with an amended proposal, the Agency stated that its proposed regulations would help Illinois to meet Clean Air Act (CAA) requirements for NO_x reasonably available control technology (RACT) under the eight-hour National Ambient Air Quality Standard (NAAQS) for ozone and would also improve air quality by reducing precursors of fine particulate matter ($PM_{2.5}$).

In this opinion, the Board first provides an abbreviated procedural background of this rulemaking before addressing preliminary issues and the background of federal requirements. Next, the Board summarizes the first-notice comments before discussing its second-notice proposal on a section-by-section basis. The Board then addresses technical and economic considerations before making its findings and reaching its conclusions. The order following this opinion then sets forth the proposed amendments for second notice.

ABBREVIATED PROCEDURAL BACKGROUND

On April 6, 2007, the Agency filed a rulemaking proposal intended to reduce emissions of nitrogen oxides (NO_x) from stationary reciprocating engines and turbines. The Board docketed the proposal as R07-18. In an order dated May 17, 2007, the Board concluded that the Agency's entire proposal was not "required to be adopted" by the CAA under Section 28.5 of the

Environmental Protection Act (Act). 415 ILCS 5/28.5 (2006) (repealed internally Dec. 31, 2007). Accordingly, the Board bifurcated the proposal and continued to consider in docket R07-18 under Section 28.5 "fast-track" procedures only the portion of the proposal applicable to the 28 internal combustion (IC) engines affected by the NO_x State Implementation Plan (SIP) Call Phase II. In a new docket R07-19, the Board provided first-notice publication of the remainder of the Agency's proposal under the general rulemaking provisions of Sections 27 and 28 of the Act (415 ILCS 5/27, 28 (2006)). Fast-Track Rules Under Nitrogen Oxide (NO_x) SIP Call Phase II: Amendments to 35 Ill. Adm. Code Section 201.146 and Parts 211 and 217, R07-18, slip op. at 2, 34-35 (May 17, 2007). The Board's opinion and order bifurcating the Agency's original proposal did not comment on the substantive merits of docket R07-19. *See id.* The Board adopted final rules in R07-18 on September 20, 2007. *See* Fast-Track Rules Under Nitrogen Oxide (NO_x) SIP Call Phase II: Amendments to 35 Ill. Adm. Code Section 201.146 and Parts 211 and 217, R07-18 (Sept. 20, 2007); *see also* 31 Ill. Reg. 14254-71 (Oct. 12, 2007).

On June 15, 2007, the hearing officer issued an order in R07-19 scheduling two hearings and setting deadlines for prefiled testimony. On August 23, 2007, the Agency filed a motion to cancel the scheduled hearings and prefiling deadlines. In an order dated August 27, 2007, the hearing officer granted the motion. At the direction of the hearing officer, the Agency subsequently filed two status reports, a first on October 31, 2007, and a second on November 19, 2007, which indicated that the Agency would file an amended proposal with the Board before the end of December 2007.

On December 20, 2007, the Agency filed its "Motion to Proceed with Amended Proposal and Withdraw Testimony." The motion included as Attachment B an amended Technical Support Document (TSD). On January 3, 2008, the Illinois Environmental Regulatory Group (IERG) filed its response. In an order dated January 10, 2008, the Board granted the Agency's motion. In a letter dated January 23, 2008, the Board requested that the Department of Commerce and Economic Opportunity conduct an economic impact study of the amended proposal. *See* 415 ILCS 5/27(b) (2006). The Board has not received a response to this request.

On March 26, 2008, the Board received prefiled testimony from four witnesses: Mr. Robert Kaleel (Kaleel Test.) and Mr. Yoginder Mahajan (Mahajan Test.) on behalf of the Agency; Mr. Kevin Wagner on behalf of the Illinois Municipal Electric Agency (IMEA) (Wagner Test.); and Ms. Deirdre Hirner (Hirner Test.) on behalf of IERG. The first hearing in this proceeding (Tr.1) took place on April 9, 2008, in Edwardsville, Madison County. At the first hearing, the hearing officer admitted into the record one exhibit, a finding by the United States Environmental Protection Agency (USEPA) that Illinois had failed to submit SIPs required under the eight-hour NAAQS for ozone (Exh. 1). *See* 73 Fed. Reg. 15416-21 (Mar. 24, 2008).

In an order dated April 17, 2008, the Board directed its Clerk to withdraw the proposed amendments that the Board had originally sent to first-notice publication in this docket. *See* Section 27 Proposed Rules for Nitrogen Oxide (NO_x) Emissions from Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R07-19, slip op. at 1-2 (Apr. 17, 2008). The Secretary of State subsequently published notice of withdrawal of the proposed amendments. 32 Ill. Reg. 7230-31 (May 2, 2008).

On April 23, 2008, the Board received prefiled testimony from Mr. James McCarthy (McCarthy Test.) of Innovative Environmental Solutions, Inc. on behalf of two natural gas transmission companies, ANR Pipeline Company and Natural Gas Pipeline Company of America (collectively, the Pipeline Group). The second hearing in this proceeding (Tr.2) took place on May 7, 2008 in Chicago. At the second hearing, the hearing officer admitted into the record one exhibit, a document offered by the Agency and entitled "Clarifications and *Errata* Sheet" (Exh. 2).

In an order dated May 12, 2008, the hearing officer set a deadline of June 9, 2008 for filing post-hearing comments and a deadline of June 23, 2008 for filing a response to post-hearing comments. On June 9, 2008, the Board received post-hearing comments from the Agency (PC 1), IMEA (PC 2), and IERG (PC 3). On June 23, 2008, the Board received a response to post-hearing comments from the Agency (PC 4). On July 1, 2008, the Board received a comment from Mr. Don C. DiCristoforo of Blue Sky Environmental LLC (Blue Sky) (PC 5). On July 16, 2008, the Board received from the Agency a motion for leave to file *instanter* a response to the comment filed on behalf of Blue Sky (Mot. Leave), accompanied by the Agency's response to that comment (PC 6).

On September 16, 2008, the Board issued its first-notice opinion and order. *See* 32 Ill. Reg. 17035-74 (Oct. 31, 2008). In its opinion, the Board among other actions granted the Agency's July 16, 2008 motion for leave to file *instanter* a response to Blue Sky's July 1, 2008 post-hearing comment and accepted that response into the record..

On December 12, 2008, IMEA and IERG filed a joint motion for extension of time requesting that the Board or hearing officer extend the deadline for filing first-notice comments. In an order dated December 23, 2008, the hearing officer extended that deadline to February 2, 2009.

On December 22, 2008, the Board received a comment from Pamela F. Faggert, Vice President and Chief Environmental Officer of Dominion Resources Services, Inc. (PC 7).

On February 5, 2009, the Agency filed its first-notice comments (PC 8), accompanied by a motion to file *instanter* (Agency Mot.). On February 6, 2009, IERG filed its first-notice comments (PC 9), accompanied by a motion to file *instanter* (IERG Mot.). On February 10, 2009, the Agency filed a motion to file *instanter* and response to first-notice comment (PC 10).

On March 19, 2009, the Agency filed a motion for expedited review and also submitted a letter from USEPA regarding potential sanctions against the state (PC 11). On March 23, 2009, the Agency also submitted a letter requesting that the Board expedite consideration of this proposal in order to avoid federal sanctions. On March 24, 2009, the hearing officer issued an order providing that, in order for the Board to address the Agency's motion to expedite at its April 2, 2009, meeting, participants must file a response to that motion by March 30, 2009. On March 24, 2009, the Pipeline Consortium filed its response supporting the Agency's motion to expedite. On March 30, 2009, IERG filed its response expressing no objection to the Agency's motion to expedite. On April 2, 2009, the Board granted the Agency's motion to expedite.

PRELIMINARY ISSUES

Agency's February 5, 2009, Motion to File First-Notice Comments *Instanter*

The Agency states that, based on the October 31, 2008, first notice publication of these proposed rules, the 45-day comment period ended December 15, 2008. Agency Mot. at 1, citing 32 Ill. Reg. 17035. The Agency further states that, on December 12, 2008, IERG and IMEA filed a motion to extend the comment period, to which counsel for the Agency and the Pipeline Consortium consented. Agency Mot. at 1. The Agency notes that the hearing officer issued an order extending the comment period to February 2, 2009. *Id*.

In support of its motion, the Agency states that it

> has been in discussion with IERG, IMEA and the Pipeline Consortium (collectively "the Parties") and resolved all of the outstanding issues except for whether replacement units that have lower emissions must have the same purpose as the unit being replaced, but required additional time after February, 2, 2009, to finalize the agreed upon language for all other issues and have prepared a joint comment on all issues besides the replacement unit issue. Agency Mot at 1-2.

The Agency notes that it has reached agreement with the Pipeline Consortium "on all issues." *Id*. The Agency claims that counsel for IERG, IMEA and the Pipeline Consortium consent to the motion and waive the opportunity to respond to it. *Id*. at 2. The Agency, IERG, IMEA, and the Pipeline Consortium request that the Board grant the motion and accept the Agency's comments as timely filed. *Id*.

Section 101.500(d) of the Board's procedural rules provides in pertinent part that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Board has received no response to the Agency's motion to file its first-notice comments *instanter*. Based on its review of the motion, and in the absence of any response to it, the Board grants the Agency's motion to file *instanter* and accepts the comments as timely filed. The Board addresses the substance of that response below. *See infra* at 7-10.

IERG's February 6, 2009, Motion to File First-Notice Comment *Instanter*

IERG states that, based on the October 31, 2008, first notice publication of these proposed rules, the 45-day comment period ended December 15, 2008. IERG Mot. at 1, citing 32 Ill. Reg. 17035. IERG further states that, on December 12, 2008, IERG and IMEA filed a motion to extend the comment period, to which counsel for the Agency and the Pipeline Consortium consented. IERG Mot. at 1. IERG notes that the hearing officer issued an order extending the comment period to February 2, 2009. *Id*. at 2.

IERG notes that the Agency "filed comments on February 5, 2009, that included language agreed to by all parties, except for the replacement unit language for averaging plans at Section 217.290(a)(2)(A)." IERG Mot. at 2. IERG states that it opposes the Agency's "requirement that replacement units that have lower emissions must have the same purpose as the unit being replaced." *Id*. IERG further states that the comments it wishes to file *instanter* "address this issue and provide language that we urge the Board to include at Second Notice." *Id*. IERG requests that the Board grant the motion and accept its comments as timely filed. *Id*.

The Board has received no response to IERG's motion to file its first-notice comments *instanter*. *See* 35 Ill. Adm. Code 101.500(d). Based on its review of the motion, and in the absence of any response to it, the Board grants IERG's motion to file *instanter* and accepts the comments as timely filed. The Board addresses the substance of that response below. *See infra* at 10-11.

Agency's February 10, 2009 Motion to File Instanter and Response (PC 10)

The Agency notes that, on February 6, 2009, IERG submitted a first-notice comment, accompanied by a motion to file *instanter*. The Agency argues that, because IERG's comment was not filed with the Board or served on the Agency until after the deadline for comments, the Agency was unable to submit a response on or before that deadline. PC 10 at 1. The Agency therefore requests that the Board grants it motion for leave to file its response *instanter*. *Id*.

The Board has received no response to the Agency's motion to file its response to first-notice comments *instanter*. *See* 35 Ill. Adm. Code 101.500(d). Based on its review of the motion, and in the absence of any response to it, the Board grants the Agency's motion to file the response *instanter* and accepts the response as timely filed. The Board addresses the substance of that response below. *See infra* at 11-12.

BACKGROUND OF FEDERAL REQUIREMENTS

USEPA revised the NAAQS for $PM_{2.5}$ and ozone in 1997. TSD at 11 (§2.1), citing 62 Fed. Reg. 38652 (July 18, 1997) ($PM_{2.5}$ standards), 62 Fed. Reg. 38855 (July 17, 1997) (ozone standards); *see* Kaleel Test. at 2. Upon establishing the NAAQS for $PM_{2.5}$, USEPA designated two areas in Illinois, Chicago and Metro East/St. Louis, as nonattainment areas.[1] TSD at 11, *id*. at 12 (Figure 2-1). "These designations became effective on April 5, 2005." *Id*. at 11, citing 70 Fed. Reg. 943 (Jan. 5, 2005). USEPA has since reviewed the NAAQS for $PM_{2.5}$ and strengthened the 24-hour standard. Kaleel Test. at 2, citing 71 Fed. Reg. 61144 (Oct. 17, 2006).

[1] For the $PM_{2.5}$ NAAQS, the following jurisdictions comprise the greater Chicago nonattainment area: Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County. TSD at 11, Mot. Amend at 2 n.1. The following jurisdictions comprise the Metro-East/St. Louis nonattainment area: Madison, Monroe, and St. Clair Counties and Baldwin Township of Randolph County. TSD at 11, Mot. Amend at 2, n.1.

"The revised NAAQS for ozone replaced the previous 1-hour averaging time with an 8-hour averaging time, and reduced the applicable ambient concentration threshold from 0.12 parts per million (ppm) to 0.08 ppm." TSD at 11, Kaleel Test. at 2. USEPA has designated two areas in Illinois, greater Chicago and Metro East/St. Louis, as moderate nonattainment areas for ozone.[2] TSD at 11, *id*. at 12 (Figure 2-2), Kaleel Test. at 2. "These designations become effective on June 15, 2004." TSD at 11, citing 69 Fed. Reg. 23858 (Apr. 3, 2004).

"Under Section 110 of the CAA and related provisions, states are required to submit for USEPA's approval, SIPs that provide for the attainment and maintenance of standards established by USEPA through control programs directed to sources of the pollutant involved." Kaleel Test. at 3, citing 42 U.S.C. §7410. "USEPA has determined that, in addition to direct particulate matter, that NO_x, sulfur dioxide (SO_2), VOCs [volatile organic compounds], and ammonia are precursors to the formation of $PM_{2.5}$." Kaleel Test. at 2-3. Accordingly, states are required to address issues including NO_x emissions in their attainment plans under the 1997 $PM_{2.5}$ NAAQS. *Id*. at 3. "This rulemaking address NO_x as a precursor to ozone and $PM_{2.5}$." TSD at 13 (§2.2).

The CAA includes provisions for the state to address emissions sources on an area-wide basis through requirements including reasonably available control measures (RACM) and reasonably available control technology (RACT). Kaleel Test. at 3, citing 42 U.S.C. §§ 7502, 7511a. In nonattainment areas,

> 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.' Kaleel Test. at 3, citing 42 U.S.C. § 7502(c)(1).

Under Sections 172 and 182 of the CAA, "RACT is required for all existing major sources of the applicable criteria pollutant and its precursors" in the nonattainment areas. TSD at 13. USEPA has recently defined RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological feasibility and economic reasonableness." TSD at 13, citing 70 Fed. Reg. 71612 (Nov. 29, 2005). In moderate nonattainment areas such as Illinois', the major source threshold is 100 tons per year (tpy). TSD at 13.

USEPA recently issued "Finding of Failure to Submit State Implementation Plans (SIP) Required for the 1997 8-Hour Ozone NAAQS." PC 1 at 1, citing 73 Fed. Reg. 15416 (Mar. 24, 2008); *see* Exh. 1. This action issued a SIP call to all states with ozone nonattainment areas that

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[2] For the eight-hour ozone NAAQS, the following jurisdictions comprise the greater Chicago nonattainment area: Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County. TSD at 11, Mot. Amend at 2 n.1. The following counties comprise the Metro-East/St. Louis nonattainment area: Jersey, Madison, Monroe, and St. Clair.

had failed to submit complete RACT SIPs and began the running of sanctions clock. Exh. 1, Tr. 1 at 7-8. USEPA's SIP Call included both the greater Chicago and Metro East/St. Louis areas. PC 1 at 3; 73 Fed. Reg. 15417-18; *see also* PC 11.

SUMMARY OF FIRST-NOTICE COMMENTS

Agency (PC 8)

The Agency states that consultation with IERG and the Pipeline Consortium has resulted in agreement with the Pipeline Consortium "on all issues" and with IERG "on all issues except for the replacement unit issue." PC 8 at 1. On a section-by-section basis below, the Board summarizes the amendments proposed by the Agency in order to effectuate those agreements.

Section 217.386: Applicability

The Agency notes that subsection (b) provides exemptions from the control requirements of Subpart Q. PC 8 at 1; *see* 35 Ill. Adm. Code 217.386(b). The Agency states that "[t]hese exemptions were proposed for units not required to be controlled under the NO_x SIP Call." PC 8 at 1. The Agency argues, however, that "[t]he exemptions should be limited to units not listed in Appendix G." *Id*.; *see* 35 Ill. Adm. Code 217.APPENDIX G. The Agency thus proposes an amendment to clarify the scope of the subsection (b) exemptions. PC 8 at 1.

The Agency notes that subsection (d) "contains the 'once-in-always-in' provision that makes a unit that at any time becomes subject to the compliance requirements of Section 217.388, always subject to demonstrating compliance with either the concentration limits, emissions averaging plan, or low usage requirements if it meets the applicability criteria on Section 217.386(a)." PC 8 at 1-2. The Agency states that, although the subsection employs the term "control requirements," "compliance options do not necessarily require operation of a control device." *Id*. at 2; *see* 35 Ill. Adm. Code 217.386(d). Accordingly, the Agency proposes to strike the word "control." PC 8 at 2.

Section 217.388: Control and Maintenance Requirements

The Agency notes that subsection (c) provides for the low-usage compliance option. PC 8 at 2; *see* 35 Ill. Adm. Code 217.388(c). The Agency states that it proposes to add language clarifying that "[o]nly units that are not Appendix G units may elect the low usage option." PC 8 at 2. Also in subsection (c), the Agency proposes to clarify language regarding low usage units required to obtain federally enforceable permits including operation limits. *Id*. at 3.

The Agency further states that it has agreed with IERG and the Pipeline Consortium on language that "would allow low usage units to be included in an emissions averaging plan, if the owner or operator complies with the substantive requirements in Sections 217.394 [Testing and Monitoring] and 217.396 [Recordkeeping and Reporting]." PC 8 at 2. The effect of this agreement is that "the only low usage units that would now be exempt from the substantive testing, monitoring, reporting, and recordkeeping requirements, are those low usage units that are not included in emissions averaging plans." *Id*.

The Agency also proposes to add a new subsection (e) in order "to clarify that owners or operators may change the method of compliance between the emission concentration limits, emissions averaging plan, and low usage options." PC 8 at 3. The proposed subsection (e)(1) "specifies that the owner or operator must conduct the applicable testing, monitoring, reporting, and recordkeeping requirements for affected units when changing the method of compliance for an affected unit from low usage to compliance with either the emissions concentration limits or inclusion in an emissions averaging plan." *Id*. The same proposed subsection also specifies the "applicable compliance date" as provided in Section 217.394(a)(2) and (a)(3). *Id*. The proposed subsection (e)(2) "specifies that if an affected unit relied on an emissions control device to comply with either the requirements for an emissions concentration limit or emissions averaging plan, and the owner or operator changes the method of compliance for that unit to low usage, the owner or operator must continue to operate the control device." *Id*. The same proposed subsection also provides that, "if the owner or operator is changing the method of compliance to the low usage option, it must complete all outstanding testing and monitoring requirements, even if the testing or monitoring period has not elapsed." *Id*.

In addition, the Agency proposes amendments to simplify the introductory language of subsections (a), (b), (c), and (d) of Section 217.388. PC 8 at 2.

Section 217.390: Emissions Averaging Plans

In subsections (a)(1)(A)(i), (a)(1)(A)(ii), and (a)(1)(C), the Agency proposes amendments clarifying "that any engine or turbine located at either an Appendix G source or an affected source under Section 217.386(a)(2) or the same company can be included in the averaging plan even if the unit being included is not required to comply with the requirements of Subpart Q." PC 8 at 3-4. The Agency also clarifies that "[a] unit that is not required to comply with the requirements of Subpart Q, but is included in an emissions averaging plan is not subject to the 'once-in-always-in' provision of subsection (d) of Section 217.386." *Id*. at 4.

The Agency also proposes to add a new subsection (a)(1)(D) allowing "inclusion of affected units that meet the low usage requirements in emissions averaging plans, if they comply with the aggregate limits for low usage units, the testing and monitoring requirements for affected units, and the recordkeeping and reporting requirements for both types of units." PC 8 at 4.

The Agency proposes to amend subsection (a)(2)(A) by providing additional language on the "same purpose" for which a replacement unit may used in order to be included in an averaging plan. PC 8 at 4. The Agency states that "[t]he 'same purpose' criteria is important to insure that a new unit will not debottleneck a process in such a way as to create additional NO_x emissions from other emissions units not covered by this Subpart." *Id*. Specifically, the Agency proposes that, in addition to being used for the same purpose, the new unit "must have substantially equivalent or less process capacity or be permitted for less NO_x emissions on an annual basis than the actual NO_x emissions as unit or units that are replaced." *Id*. The Agency elaborates that an appropriate replacement unit either has equivalent or less process capacity regardless of emissions or has lower emissions regardless of process capacity. *Id*. at 4-5. The

Agency further states that, "[f]or natural gas transmission and storage facilities, the substantially equivalent process capacity of the replacement unit may be demonstrated in accordance with 18 C.F.R. 2.55(b), which allows replacements that 'have a substantially equivalent delivery capacity.'" *Id*. at 4.

At subsection (a)(2)(B), the Agency proposes to strike language excluding low usage units from emissions averaging plans in order to be consistent with the proposal to allow them to be included in those plans. PC 8 at 5.

The Agency proposes to amend subsection (d) regarding amended averaging plans first by adding the term "seller" in order to "to require that all applicable averaging plans are updated when a unit is added to a source." PC 8 at 5. The Agency also proposed to add a new subsection (d)(3) to provide a deadline "for submitting an averaging plan after the purchase of a new unit." *Id*.

In subsection (g)(2), the Agency proposes to add the phrase "as applicable" to the definition of the variable "E_{all}" to clarify that the allowable NO_x emission rate may be determined differently depending on the circumstance. PC 8 at 5. The Agency also proposed to add a cross reference to the proposed new subsection (g)(7) in the definition of the variable $C_{d(all)}$, or allowable concentration of NO_x. *Id*. That proposed new subsection (g)(7) specifies that, for low usage units included in an emissions averaging plan, "the higher of AP-42 or the tested actual emissions must be used for determining the allowable NO_x emissions rate." *Id*. at 6.

Section 217.392: Compliance

Subsection (a) addresses engines listed in Appendix G. 35 Ill. Adm. Code 217.392(a). The Agency notes that the proposal for First Notice including language regarding exemption under Section 217.386(b). PC 8 at 6. The Agency argues that, because Appendix G units are not eligible for an exemption, this language should be struck. *Id*.

Subsection (c) addressing NO_x allowances refers to NO_x trading programs administered by USEPA. 35 Ill. Adm. Code 217.392(c). The Agency argues that, as a result of the remand of the Clean Air Interstate Rule (CAIR) to USEPA by the U.S. Court of Appeals, another entity could administer the CAIR Program. PC 8 at 6. Accordingly, the Agency proposes to replace a reference to a trading program "administered by USEPA" with a reference to a program "in which the State of Illinois participates." *Id*.

The Agency also proposed adding a new subsection (c)(1)(C) to clarify "what constitutes an event for the purpose of determining whether an owner or operator is in compliance with the requirements of subsection (c)(1)(B) limiting the use of allowances to two events in any rolling five-year period." PC 8 at 6-7.

In order to make it more readable, the Agency proposes to break subsection (c)(2) into subsections. PC 8 at 7. The Agency also proposes to add a subsection (c)(2)(B) clarifying that, "when a low usage unit is included in an averaging plan and there is noncompliance with a limitation in that plan, an owner or operator who chooses to use NO_x allowances must calculate

the emissions using the allowable emissions concentration from Section 217.388, rather than the AP-42 factor or uncontrolled emissions." *Id*. The Agency also proposes to add a subsection (c)(2)(E) to clarify that, if the remand of CAIR results in elimination of the annual NO_x trading program, "a NO_x ozone season allowance can be used." *Id*.

Section 217.394: Testing and Monitoring

In subsection (d)(1), the Agency proposes to add the term "utilizing" to clarify the application of ASTM D6522-00. PC 8 at 7.

In subsection (e), the Agency responds to the comment filed by Dominion Resources Services by allowing the use of CEMS complying with the provisions of 40 C.F.R. 75 in addition to units complying with 40 C.F.R. 60. PC 8 at 7; *see* PC 7.

The Agency also proposes to amend subsection (f) to "ensure that low usage nits included in emissions averaging plans comply with the substantive provisions for testing, monitoring, reporting and recordkeeping that apply to other affected units." PC 8 at 7.

Section 217.396: Recordkeeping and Reporting

The Agency proposes to amend subsection (a) to clarify "that the recordkeeping requirements affect any unit that is included in an emissions averaging plan even if that unit would not otherwise be subject to these requirements." PC 8 at 7-8.

The Agency also responds to a comment by Dominion Resources Services by proposing to add a subsection (e). That proposed new subsection provides that "units with CEMS that comply with 40 C.F.R. 75 are not subject to other reporting and recordkeeping requirements besides those on Part 75 unless the units are included in an emissions averaging plan." *Id*.; *see* PC 7.

IERG (PC 9)

IERG states that the Agency's first-notice comments filed on February 5, 2009, include the participants' agreement on revisions to this proposal, with the exception of Section 217.390(a)(2)(A). PC 9 at 2. That subsection excludes units from emissions averaging plans if they commence operations after January 1, 2002, unless they are replacement units. *Id*.; *see* PC 8 at 4-5. Although the Agency proposes in Section 217.390(a)(2)(A) to define the units that qualify as replacement units and can be included in an emissions averaging plan, IERG states that it does not agree with the Agency's language. PC 9 at 2.

As the second sentence of that section, the Agency proposes to following: "[t]he new unit must be used for the same purpose and have substantially equivalent or less process capacity or be permitted for less NO_x emissions on annual basis than the actual NO_x emissions as the unit or units that are replaced." PC 8 at 4. IERG proposes instead the following language for that second sentence: "[t]he new unit or units must be used for the same purpose having substantially equivalent or less process capacity, or the new unit or units must be permitted for less NO_x

emissions on an annual basis than the actual NO_x emissions of the unit or units that are replaced." PC 9 at 2.

IERG argues that, under the Agency's language, "new units cannot participate in averaging unless they are used for the same purpose as the units they are replacing *and* either they have substantially the same or less process capacity or less NO_x emissions than the replaced units." PC 9 at 2-3 (emphasis in original). IERG further argues that, in applying the emissions qualifier, the Agency's language requires that "the replacement units must still have the same purpose as the replaced units." *Id*. IERG claims that this is "a flawed concept." *Id*.

IERG argues that the Agency's application of the term "same purpose" is "dangerously vague." PC 9 at 3. IERG illustrates its argument by positing a facility with "Unit A that provides power to an existing Process A, and the facility uses Unit A in an averaging plan with other units at the facility." *Id*. IERG then proposes that the same facility considers installing in Process B a new Unit B that can provide power to both Process A and Process B and also allow Unit A to go to standby mode. *Id.* IERG claims that this proposal would provide environmental and efficiency benefits by bringing "a more efficient power source to greater portions of the facility." *Id*. IERG also stresses that "the new unit would likely be subject to a myriad of programs such as New Source Performance Standards (NSPS) and possibly New Source Review (NSR), thus decreasing overall emissions." *Id*.

IERG argues that, because the proposed new Unit B provides power to Process A as Unit A did and also provides power to Process B, the Agency would determine that Unit B does not have the "same purpose" as Unit A. PC 9 at 3. IERG further argues that this determination by the Agency would "prohibit Unit B from replacing Unit A in an averaging plan." *Id*.

IERG also claims that the Agency had disagreed with IERG's proposed language because of "concerns with debottlenecking of downstream units." PC 9 at 4. IERG considers this concern "misplaced." *Id*. IERG suggests that debottlenecking, an NSR concept, is not relevant in a RACT rulemaking. *Id*. Also, IERG emphasizes that the Agency's proposed language "already requires that permitting for the new unit will occur." *Id*.; *see* PC 8 at 4. IERG argues that that the permitting process will address any emissions resulting from debottlenecking. PC 9 at 4.

IERG returns to its example of the proposed new Unit B to illustrate the Agency's "misplaced emphasis on the use of Subpart Q to address the debottlenecking issue." PC 9 at 4. Specifically, IERG argues that, if "Unit A is not participating in an averaging plan and is replaced by a new Unit B that fulfills the power requirements for Process A and Process B, the debottlenecking concerns expressed by the Illinois EPA do not go away simply because there are no averaging plan considerations." *Id*. IERG further argues that "these concerns are properly addressed by the permitting program through the application of rules and regulations designed for that purpose." *Id*.

Agency Response to IERG (PC 10)

The Agency characterizes IERG's comment regarding Section 217.390(a)(2)(A) as a request "that the requirement that a replacement unit be used for the same purpose be eliminated for replacement units that have lower emissions." PC 10 at 1. The Agency states that its first-notice comment disagreed with this position "but did not further its explanation because at the time IERG had not provided a basis for the request." *Id*.

The Agency claims that the natural gas pipeline industry originally proposed to include replacement units in the averaging provisions of the rule in order "to allow for and encourage the replacement of engines with newer, and cleaner engines." PC 10 at 1-2. The Agency suggests that the pipeline industry proposed and the Agency agreed to the "replacement of engines or turbines with new engines or turbines with substantially equivalent capacity that are used for the same purpose." *Id*. at 2. The Agency states that IERG now requests a "last minute revision of this concept" that is not consistent with its underlying intent. *Id*. The Agency argues that "IERG had multiple opportunities to raise this issue to both the Illinois EPA and the Board in a timely manner and did not do so." *Id*. at 3.

The Agency also returns to IERG's example of the proposed new Unit B. The Agency states that, "[i]ronically, the hypothetical new unit in IERG's example would probably qualify as a replacement unit under the IEPA's proposal. This is because its purpose would be to supply power to existing processes at the source." PC 10 at 2. The Agency suggests that, without specific information demonstrating that IERG's proposed language provides efficiency and environmental benefits, it must oppose that proposed language. *Id*.

The Agency also argues that IERG's proposed language may be environmentally detrimental. PC 10 at 2. Noting that IERG has correctly indicated that new sources may be subject to requirements including LAER [Lowest Achievable Emission Rate], BACT [Best Available Control Technology], or NSPS [New Source Performance Standards], the Agency claims that "[t]hese requirements are typically more stringent than the requirements of this rulemaking." *Id*. The Agency argues that "[i]ncluding such units in an averaging plan could remove a source's obligation to reduce emissions from existing units not subject to these requirements, thus causing emissions increases." *Id*. The Agency suggests that including replacement units in an averaging plan must not only reduce emissions but must also "address the implications of this decreases in emissions with the other existing units that are not being replaced." *Id*. The Agency argues that "[c]onsideration of 'purpose' is needed to address the broader implication of being allowed to have emission units participate in an emissions averaging plan." *Id*.

SUMMARY OF TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

Although the Board in a letter dated January 23, 2008, requested that DCEO conduct an economic impact study on the Agency's amended rulemaking proposal (*see* 415 ILCS 5/27(b)(1) (2006)), the Board to date has received no response to that request. At the second hearing, the Board received no testimony or comment regarding the absence of any response to the request. *See* Tr.2 at 16-17.

In its first-notice opinion and order, the Board at considerable length addressed the technical feasibility and economic reasonableness of the Agency's proposal by considering a number of issues: the technical feasibility of controls for both engines and turbines, potentially affected sources, projected emission reductions, and the cost-effectiveness of controls on both engines and turbines. Section 27 Proposed Rules for Nitrogen Oxide (NO_x) Emissions from Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R07-19, slip op. at 20-31 (Sept. 16, 2008).

BOARD FINDINGS

The Board adopts the amendments to its first-notice proposal offered in the Agency's post-hearing comment for second notice. With regard to the unresolved issue concerning participation of replacement units in emissions averaging plans, the Board finds upon reviewing the record and the participants' arguments that the Agency's proposed language appropriately allows and encourages replacement of engines with newer and cleaner engines. The Board notes that the intent of allowing the inclusion of replacement units in averaging plans is to encourage replacement of engines with newer and cleaner engines having substantially equivalent capacity that are used for the same purpose. The Board agrees with the Agency that expanding the scope of the proposed intent by removing the requirement that a replacement unit be used for the "same purpose," as suggested by IERG, may not result in environmental benefits.

As noted by IERG and the Agency, the new emission units may be subject to requirements such as LAER, BACT, and NSPS that are typically more stringent than the requirements of this rulemaking. Including such new units in an averaging plan as replacement units rather than as new units could avoid any reduction in emissions from existing units not subject to these requirements. This could potentially result in emissions increases and not decreases, as asserted by IERG. Further, the Board agrees with the Agency that, while IERG's proposal would require that the replacement of units be accompanied by decrease in emissions from that replacement unit itself, IERG's proposal does not address the implications of this decrease in emissions with the other existing units that are not being replaced. In light of this, the Board concludes that IERG has not provided sufficient specific information to demonstrate that its proposed language would necessarily provide greater efficiency or environmental benefits. Accordingly, the Board declines to adopt the alternate language proposed by IERG for Section 217.390(a)(2)(A).

Since adopting its first-notice opinion and order, the Board has adopted substantive changes only as proposed in the Agency's first-notice comments and reflecting agreements with regulated entities. Thus, as it did in its first-notice opinion and order, the Board finds the proposed regulations technically feasible and economically reasonable.

The Board proceeds below with a section-by-section discussion of its second-notice proposal and its development in the record through the course of this proceeding.

DISCUSSION OF BOARD'S SECOND NOTICE PROPOSAL

Part 201: Permits and General Provisions

Exemptions from State Permit Requirements (Section 201.146)

Section 201.146 of the Board's air permit regulations exempts specified equipment and activities from the requirement of obtaining state construction or operating permits. 35 Ill. Adm. Code 201.146. Subsection (i) specifically addresses stationary internal combustion engines and stationary gas turbines. 35 Ill. Adm. Code 201.146(i).

The Agency originally proposed to amend this subsection in docket R07-18. After the Board order bifurcating the original proposal, however, the Agency agreed that this particular amendment should instead be addressed in this docket. Fast-Track Rules Under Nitrogen Oxide (NO_x) SIP Call Phase II: Amendments to 35 Ill. Adm. Code Section 201.146 and Parts 211 and 217, R07-18, slip op. at 5-6 (Aug. 9, 2007). The Board found that the issue of this proposed permit exemption "must be addressed in docket R07-19" and accordingly did not include the proposed amendment to Section 201.146(i) in the Second Notice opinion and order in R07-18. *Id*.

In its motion to proceed with an amended proposal, the Agency addressed Section 201.146 by directing the Board to "[u]se the language as it appeared in the first notice as set forth in the Ill. Reg. dated May 4, 2007." Mot. at 19; *see* NO_x Emissions from Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Section 201.146 and Parts 211 and 217, R 07-18, slip op at 7-8 (Apr. 19, 2007) (first-notice opinion and order); 31 Ill. Reg. 6559-77 (May 4, 2007); *see also* Tr.1 at 32-33. However, in its subsequent "Clarifications and *Errata* Sheet" submitted at the second hearing on May 7, 2008, the Agency proposes an amendment to Section 201.146 that differs from the amendment it had originally proposed in R07-18. Exh. 2 at 3.

In its "Clarifications and *Errata* Sheet," the Agency proposed to amend Section 201.146(i) to provide that the criteria of the permit exemption apply both to specified engines and stationary turbines. Exh. 2 at 3; *see* 35 Ill. Adm. Code 201.146(i). The Agency also proposed to provide that "[a]ny internal combustion engine with a rating at equal to or greater than 500 bhp output that is subject to the control requirements of 35 Ill. Adm. Code Part 217.388(a) or (b)" must obtain a permit. Exh. 2 at 3; *see* 35 Ill. Adm. Code 217.388.

The Board adopts the proposed amendments to Section 201.146(i) for second notice.

Part 211: Definitions and General Provisions

Emergency or Standby Unit (Section 211.1920)

Part 211 of the Board's air regulations provides definitions and general provisions with regard to emission standards and limitations for stationary sources. 35 Ill. Adm. Code 211. Specifically, Section 211.1920 defines, for a stationary gas turbine or a stationary reciprocating IC engine, an "emergency or standby unit." 35 Ill. Adm. Code 211.1920. The Agency proposed to add to this definition a new subsection (e) providing that, "[n]otwithstanding any other

subsection in this Section, emergency or standby units may operate an additional 50 hours per year in non-emergency situations." Mot. at 3, 18. The Agency stated that "[t]his change is consistent with a similar definition that applies to maximum achievable control technology units." Mot. at 3.

After the deadlines to file post-hearing comments and any responses to post-hearing comments had passed, the Board on July 1, 2008 received a comment from Blue Sky (PC 5). Blue Sky recommended "that the definition of emergency or standby unit in Section 211.1920 be amended to include the operation during PJM's Emergency Load Response Program ("ELRP")."[3] PC 5 at 1. Blue Sky indicated that PJM activates the ELRP and the use of emergency units according to specific procedures in the event of a declared emergency. PC 5 at 1. Blue Sky argued that

> [n]umerous states now allow emergency engines to participate during such time (as opposed to waiting for a blackout), principally because studies prove that it is better to prevent a blackout by using a subset of emergency generators for a short period of time as opposed to losing the grid, which would mean all emergency generators in the state operating for many hours or possibly days. PC 5 at 1.

Blue Sky stated that that the ELRP is distinct from other PJM programs that are implemented for economic reasons and that PJM has activated the program only five times for a total of 20 hours in the last five years. *Id*. at 1-2.

Blue Sky suggested that the current definition of "emergency or standby unit" allows operation of those units only after a voltage reduction, brownout, or blackout has occurred. PC 5 at 2; *see* 35 Ill. Adm. Code 211.1920. Because it characterizes the ELRP as a "panic button" to be pushed just before those occurrences, Blue Sky recommended adding the following language to the definition:

> [a]n engine that operates during an emergency condition according to the procedures in the PJM Emergency Operations Manual for a PJM Declared Emergency. A PJM Declared Emergency means a condition that exists where the PJM Interconnections, LLC, or its successor, notifies electric distributors that an emergency exists or may occur and it is necessary to implement the procedures in the PJM Manual 13 Emergency Operations, as revised. PC 5 at 2.

On July 16, 2008, the Agency filed a motion for leave to file *instanter* a response to Blue Sky's comment and its response (PC 6). In its first-notice opinion and order on September 16,

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[3] Although Blue Sky's comment provided no description or background of PJM, the Board found the prefiled testimony of Mr. Wagner of IMEA to be instructive on this issue. Mr. Wagner stated that the high-voltage electric transmission grid is administered by regional transmission organizations (RTOs), one of which is PJM. Wagner Test. at 4. He further stated that these RTOs operate wholesale power markets and oversee use of the grid and assure its availability on a non-discriminatory basis. *Id*. at 4-5. Mr. Wagner indicated that "PJM's footprint is primarily north of Interstate 80." *Id*. at 5.

2008, the Board granted the Agency's motion and accepted its response. The Agency's response suggested that Blue Sky represents Klein Tool, which "enrolled in ELRP to provide emergency electrical service for short periods of time to prevent black outs." PC 6 at 1. The Agency stated that Blue Sky had raised the possibility that Klein Tool generating units operating at the request of PJM might not meet the Board's definition of an "emergency or standby unit" or comply with Klein Tool's current permit. PC 6 at 1. The Agency stated that it has indicated to Klein Tool that, under the described circumstances, its units fall within that definition. *Id.* at 1-2. The Agency stated that it has also indicated to Klein Tool that, based on the same circumstances, there is no need to modify its permit. *Id*. The Agency concluded that "no amendments to the current or proposed definition of emergency/standby unit are necessary at this time." *Id*. at 2. In addition, the Agency argued that the amendment proposed by Blue Sky "falls beyond the scope of the current rulemaking[,] which was proposed to address NO_x RACT." *Id*.

In its first-notice opinion and order, the Board declined to adopt the language proposed by Blue Sky and adopted for first-notice publication the language proposed by the Agency to amend the definition of "emergency or standby unit" at Section 211.1920.

The Board adopts for second notice the proposed amendments to Section 211.which defines "emergency or standby unit."

Part 217: Nitrogen Oxides Emissions

On September 20, 2007, the Board in docket R07-18 adopted a new Subpart Q to Part 217 of the Board's air regulations. Fast-Track Rules Under Nitrogen Oxide (NO_x) SIP Call Phase II: Amendments to 35 Ill. Adm. Code Section 201.146 and Parts 211 and 217, R07-18 (Sept. 20, 2007); *see* 31 Ill. Reg. 14254-71 (Oct. 12, 2007); *see also* 35 Ill. Adm. Code 217.386-396. Section 217.386 of the Board's NO_x regulations now provides in its entirety that "[a] stationary reciprocating internal combustion engine listed in Appendix G of this Part is subject to the requirements of this Subpart Q." 35 Ill. Adm. Code 217.386. Appendix G lists 28 existing reciprocating internal combustion engines affected by Phase II of the NO_x SIP Call. *See* 217 Ill. Adm. Code 217.APPENDIX G.

The Agency stated that its rulemaking proposal in this docket would amend the requirements of Subpart Q "but would not change the substantive elements as they apply to NO_x SIP Call engines." Mot. Amend at 2. In his prefiled testimony on behalf of the Agency, Mr. Kaleel stated that the approach to NO_x control proposed in this docket is consistent with the approach adopted in R07-18 for large engines subject to Phase II of the NO_x SIP Call. Kaleel Test. at 4; citing Fast-Track Rules Under Nitrogen Oxide (NO_x SIP Call Phase II: Amendments to 35 Ill. Adm. Code Section 201.146 and Parts 211 and 217, R07-18 (Sept. 20, 2007); *see* 31 Ill. Reg. 14254-71 (Oct. 12, 2007); *see also* 35 Ill. Adm. Code 217.386–396. Specifically, Mr. Kaleel stated that the Agency has proposed that "turbines and engines not subject to Phase II of the NO_x SIP Call be subject to NO_x emissions limits at the same level as that required by R07-18 which met the State's obligations under Phase II of the NO_x SIP Call." Kaleel Test. at 4; *see* Mot. Amend, Att. A.

Applicability (Section 217.386)

Section 217.386(a). The Agency's proposal applied Subpart Q to specified units in the greater Chicago and Metro East/St. Louis nonattainment areas. Mot. Amend at 2-3; *see* Mot. Amend, Att. A at 1 (proposed new Section 217.386(a)(2)); *see also* Kaleel Test. at 4, TSD at 13 (RACT). In her testimony on behalf of IERG, Ms. Hirner supported the geographical applicability of the proposed rule to the nonattainment areas. Hirner Test. at 3. She stated that "IERG has long advocated this approach and it is supported by NO_x emissions modeling." *Id*., citing Mot. Amend. In his testimony on behalf of the Pipeline Group, Mr. McCarthy also noted that the Agency limited the geographical applicability of the proposed regulation to the nonattainment areas. McCarthy Test. at 5. He stated that "[t]his applicability criterion was adamantly supported by the Pipeline Group throughout rule development, and substantiated by regional air quality modeling completed in the fall of 2007." *Id*. at 5-6.

In addition to limiting its geographical applicability to the nonattainment areas, the Agency also proposed to limit the proposed regulation to "[s]tationary reciprocating internal combustion engines and turbines located at a source that emits or has the potential to emit NO_x in an amount equal to or greater than 100 tons per year." Mot. Amend, Att. A at 1 (proposed new Section 217.386(a)(2)); *see* Mot. Amend at 2-3, TSD at 13 (major source threshold for RACT). In her testimony on behalf of IERG, Ms. Hirner stated that IERG had misgivings about the applicability language originally proposed by the Agency. Hirner Test. at 3; *see also* PC 3 at 4. Because that original language was not consistent with existing permit exemptions, IERG feared that it would impose new requirements on "an unknown universe of engines and turbines." Hirner Test. at 3, PC 3 at 4. Ms. Hirner testified that, because the Agency's amended proposal applies only to major sources of NO_x, it "provides more certainty to the reach of this rulemaking." Hirner Test. at 3; *see also* PC 3 at 4. In its post-hearing comments, IERG characterized this applicability provision as one of the "vitally important" elements of the Agency's amended proposal. PC 3 at 8.

Responding to questions at the first hearing, Mr. Kaleel clarified that the threshold of 100 tpy is not calculated solely on the basis of NO_x emission from engines and turbines. *See* Tr. 1 at 19. Specifically, he stated that Section 217.386(a)(2) "could refer to any emission units that emits NO_x at a source." *Id*. Mr. Kaleel also indicated that the Agency's proposed rule would not apply to engines or turbines located in one of the nonattainment areas at a source that does not emit or have the potential to emit 100 tpy of NO_x. Tr.1 at 27-28. Mr. Kaleel further indicated that a single engine or turbine located in one of the nonattainment areas that emits or has a potential to emit 100 tpy of NO_x would be subject to the proposed regulations. Tr.1 at 28. However, Mr. Kaleel acknowledged that, if actual emissions from that engine or turbine are less than 100 tpy, the operator could seek a federally enforceable emissions limit or restriction on operation that would reduce the potential to emit below 100 tpy. *Id*. Mr. Kaleel stated that, if the operator accepted such an enforceable limit, "they could avoid the requirements of the rule." *Id.* at 28-29.

In addition to applying to major sources of NO_x emission in the nonattainment areas, the Agency's proposed regulations apply to stationary internal combustion engines and turbines where "[t]he engine at nameplate capacity is rated at equal to or greater than 500 bhp output; or

[t]he turbine is rated at equal to or greater than 3.5 MW . . .” Mot. Amend, Att. B at 1; Mahajan Test. at 2; Kaleel Test. at 5.

In his testimony on behalf of the Pipeline Group, Mr. McCarthy expressed a firm belief that larger “engines and turbines provide the most cost effective and environmentally beneficial avenue for emission reductions” and questioned both the basis and legitimacy of the 500 bhp threshold for engines and the 3.5 MW threshold for turbines. McCarthy Test. at 6. Responding to a question at the second hearing, Mr. Kaleel stated that the Agency developed these thresholds based on the belief that units of that size have the potential to emit 100 tpy of NO_x. Tr.2 at 15. Mr. Kaleel acknowledged that engines of this size would not necessarily operate continuously throughout the year and may not actually emit 100 tons of NO_x. *Id*. He noted that the proposed rule includes mechanisms through which “engines of this size could avoid having to comply with the rule.” *Id*. at 15-16. Specifically, “[s]ources can opt for a federally enforceable emissions limit or a low usage limit in terms of the number of hours the unit will be operated.” PC 1 at 5. Mr. McCarthy testified that the limited geographical applicability of the proposed rule and the option of low usage operation “partially ameliorate our concerns and thus the Pipeline Group does not strenuously object here. . . .” McCarthy Test. at 6.

Section 217.386(b). The Agency’s proposal also provided an exemption for mobile or portable units: “[n]otwithstanding subsection (a) of this Section, an affected unit is not subject to the requirements of this Subpart Q if the engine or turbine is or has been . . . [a]n engine with nameplate capacity rated at less than 1,500 bhp (1,118kW) output, mounted on a chassis or skids, designed to be movable, and moved to a different source at least once every 12 months.” Mot. Amend, Att. A at 1 (proposed Section 217.386(b)(5)). In responding to questions at the first hearing, Mr. Kaleel expressed the intent that, in order for this exemption to apply, the engine or turbine would have to be physically moved to a different Clean Air Act source at least once every 12 months. Tr.1 at 14. He further clarified that the Agency did not intend the exemption to apply to engines or turbines that moved between different locations within a source. *Id*. at 14-16. Mr. Kaleel suggested that units remaining at a particular source may effectively be stationary, while others may be moved frequently from source to source. Tr.1 at 14.

> We’re really thinking of things like construction sites or perhaps asphalt plants that are movable and mobile. They’re not going to be in the same general location for any significant length of time. It’s difficult to regulate units like that, difficult to track them, to inspect them on a regular basis or routine basis. Tr.1 at 16; *see also* PC 1 at 6.

The Agency also accounted for the cap of 1,500 bhp in this proposed exemption. The Agency indicated that this threshold is based in part on regulatory language exempting engines rated at 1,500 bhp or less from permit requirements. PC 1 at 5, citing 35 Ill. Adm. Code 201.146. Although the Agency acknowledged that its proposal generally applies to engines rated at or greater than 500 bhp, it states that potentially-affected sources confirm that “many units rated between 500 bhp and 1,500 bhp will have low emissions, especially those engines that are mounted on skids and moved around a particular source.” PC 1 at 5. The Agency further stated that small units may be used on a limited basis as back-up generation and have low emissions but will not fall under the exemption for an emergency or standby unit. PC 1 at 5; *see* 35 Ill. Adm.

Code 211.1920; Mot. Amend, Att. A at 18 (proposing amendment to definition of "emergency or standby unit"). For engines rated higher than 1,500 bhp that have low emissions, the Agency stated that "an owner or operator may opt for a federally enforceable emission limit or a limit on the hours of operation." PC 1 at 5.

In addition to mobile or portable units, the Agency proposed to exempt four other categories of units from the requirements of Subpart Q. First, the Agency proposed to exempt an engine or turbine that "is or has been [u]sed as an emergency or standby unit as defined by 35 Ill Adm. Code 211.1920." Mot. Amend, Att. A at 1 (proposed new Section 217.386(b)(1)); *see supra* at 14-16 (proposing to amend definition). Second, the Agency suggested exempting those "[u]sed for research or for the purposes of performance verification or testing." Mot. Amend, Att. A at 1 (proposed new Section 217.386(b)(2)). Third, the Agency also proposed an exemption for units "[u]sed to control emissions from landfills, where at least 50 percent of the heat input is gas collected from a landfill." Mot. Amend, Att. A at 1 (proposed new Section 217.386(b)(3)). Fourth, the Agency recommended an exemption for units "[u]sed for agricultural purposes including the raising of crops or livestock that are produced on site, but not for associated businesses like packing operations, sale of equipment or repair." Mot. Amend, Att. A at 1 (proposed new Section 217.386(b)(4). These four proposed exemptions did not generate significant comment or dispute in the course of these proceedings.

In its first-notice comment, the Agency noted that these subsection (b) exemptions from the control requirements of Subpart Q "were proposed for units not required to be controlled under the NO_x SIP Call." PC 8 at 1. The Agency argued, however, that "[t]he exemptions should be limited to units not listed in Appendix G." *Id*.; *see* 35 Ill. Adm. Code 217.APPENDIX G. The Agency thus proposed an amendment to clarify the scope of the subsection (b) exemptions. PC 8 at 1.

Section 217.386(c). The Agency proposed to add a new subsection (c) providing that, "[i]f an exempt unit ceases to fulfill the criteria specified in subsection (b) of this Section, the owner or operator must notify the Agency in writing within 30 days after becoming aware that the exemption no longer applies and comply with the control requirements of this Subpart Q." Mot. Amend, Att. A at 2 (proposed new Section 218.386(c)). This proposed language did not generate significant comment or dispute in the course of these proceedings.

Section 217.386(d). The Agency proposed to add a new subsection (d) providing that "[t]he requirements of this Subpart Q will continue to apply to any engine or turbine that has ever been subject to the control requirements of Section 217.388, even if the affected unit or source ceases to fulfill the rating requirements of subsection (a) of this Section or becomes eligible for an exemption pursuant to subsection (b) of this Section." Mot. Amend, Att. A at 2 (proposed new Section 217.386(d)).

In its first-notice comment, the Agency stated that, although the subsection employs the term "control requirements," "compliance options do not necessarily require operation of a control device." PC 8 at 2; *see* 35 Ill. Adm. Code 217.386(d). Accordingly, the Agency proposed to strike the word "control." PC 8 at 2.

Subsection (e). In testimony on behalf of IERG, Ms. Hirner noted that the Agency's proposal includes a compliance deadline of May 1, 2010. Hirner Test. at 5; *see* Mot. Amend, Att. A at 10 (proposed new Section 217.392(b)). Ms. Hirner testified that

> sources may have already implemented or may be implementing emission reductions at units that would be affected by the Proposed Rule. Reasons for such reductions may involve a larger decision across the source to target reductions in one area in order to offset additional NO_x emissions that may be planned in another area, which is often referred to as 'netting.' Similarly, sources may decide to reduce their own emissions in order to sell emission reduction credits as 'offsets' so that another source may add NO_x emission. Hirner Test. at 5.

Ms. Hirner further testified that both netting and offsetting typically involve the permitting process "in order to recognize the creditable emissions decreases and their use for the corresponding emissions increases." *Id*. at 5-6. Ms. Hirner expressed the concern that permits could "rely on NO_x emissions reductions at units that would now be subject to the Proposed Rule." *Id*. at 6. In order to prevent any conflicts between prior permits and the Agency's proposal, IERG proposed as a new subsection (e) the following language:

> [w]here a construction permit, for which the application was submitted to the Agency prior to the adoption of this Subpart, is issued that relies on decreases in emissions of NO_x from existing emission units for purposes of netting or emission offsets, such NO_x decreases shall remain creditable notwithstanding any requirements that may apply to the existing emissions units pursuant to this Subpart. *Id*.

Ms. Hirner further testified that the Agency concurred in this adding this subsection "ín order to provide certainty in past, current and future permitting decisions." *Id*.

Indeed, in filing its "Clarifications and *Errata* Sheet" as Exhibit 2, the Agency proposed a new subsection (e) substantially identical to that proposed by IERG in Ms. Hirner's testimony. Exh. 2 at 1. In post-hearing comments, IERG noted this proposal on the part of the Agency. PC 3 at 7. Emphasizing that this proposed subsection (e) "would preserve NO_x emission reductions in qualifying netting or offset situations," IERG urged the Board to adopt this language. The Board previously found that the provision proposed by IERG and the Agency resolves conflicts between prior permits and the instant proposal and adopted the proposed Section 217.386(e) for first notice.

Control and Maintenance Requirements (Section 217.388)

Section 217.388(a). Section 217.388(a) now provides that "[t]he owner or operator must limit the discharge from an affected unit into the atmosphere of any gases that contain NO_x" to separate emissions concentration limits for spark-ignited rich-burn engines and spark-ignited lean-burn engines. 35 Ill. Adm. Code 217.388(a). In addition to these two types of units, Mr. Kaleel testified that the Agency's proposal offers four new and "separate concentration limits for different types of engines and turbines, and based on the kind of fuel used." Kaleel Test. at 5.

Specifically, the Agency first proposed to amend the current emission concentration level for spark-ignited lean-burn engines to provide an exception "for existing spark-ignited Worthington engines that are not listed in Appendix G." Mot. Amend, Att. A at 2 (proposed Section 217.388(a)(2)); *see* 35 Ill. Adm. Code 217.APPENDIX G (Existing Reciprocal Internal Combustion Engines Affected by the NO_x SIP Call). The Agency then proposed a new subsection (a)(3), which provides a new emissions concentration level applicable to those engines. Mot. Amend, Att. A at 2 (proposed new Section 217.388(a)(3)). In addition, the Agency proposed new language providing three separate emissions concentration levels applicable to diesel engines, gaseous fuel-fired turbines, and liquid fuel-fired turbines. Mot. Amend, Att. A at 2 (proposed new Sections 217.388(a)(4), (a)(5), (a)(6)).

In his testimony on behalf of the Pipeline Group, Mr. McCarthy stated that engines and turbines respond to emission controls in a manner that varies among the manufacturers and models of those units. McCarthy Test. at 5. Specifically, he stated that "[u]nit-specific technology costs and performance can vary dramatically for the slow speed, integral IC engines prevalent in gas transmission," requiring flexibility in NO_x regulation. *Id*. Mr. McCarthy lent support to the Agency's proposal to add Section 217.388(a)(3) by stating that the Agency "has properly considered an example of performance limitations by including a less stringent NO_x standard under Section 217.388(a)(3) for a certain engine type found in the gas transmission sector." *Id*.

In its post-hearing comments, the IMEA stated that it "has not challenged" aspects of the Agency's proposed rule, including the control requirements. PC 2 at 7 (noting proposed compliance options); Tr.1 at 43. Similarly, post-hearing comments from IERG indicated that it "has not objected to the emission concentration limits" in the Agency's proposal. PC 3 at 1-2 (noting compliance options); Tr.1 at 43.

Section 217.388(b). Section 217.388(b) now provides that the owner or operator of an affected unit may, as an alternative to complying with the emissions concentration limits in subsection (a), comply with the requirements of an emissions averaging plan as set forth in Section 217.390. 35 Ill. Adm. Code 217.388(b); *see* 35 Ill. Adm. Code 217.390. The Agency proposed to amend this subsection in two respects. First, the Agency proposed that "*any* affected unit identified by Section 217.386" may satisfy the control requirements of Subpart Q by complying with the "requirements of the applicable emissions averaging plan as set forth in Section 217.390." Mot. Amend, Att. A at 2-3 (proposed Section 217.388(b)(1)) (emphasis added); *see* 35 Ill. Adm. Code 217.390. Second, the Agency proposed that "units identified in Section 217.386(a)(2)," may satisfy the control requirements by complying with "[t]he requirements of an emissions averaging plan adopted pursuant to any other Subpart of this Part." Mot. Amend, Att. A at 3 (proposed new Section 217.388(b)(2)).

In her testimony on behalf of IERG, Ms. Hirner stated generally that emissions averaging plans allow "sources to decide which emission units are the most effective to control, thus allowing over-compliant units to offset emissions from units that are not effective to control." Hirner Test. at 4. She lent support to the Agency's proposed Section 217.388(b)(2), stating that the language would allow averaging plans "to span across different Subparts of Part 217." *Id.* She further stated that "[t]his will be helpful to our members that may not be able to utilize

averaging among Subpart Q units alone, but could achieve compliance for Subpart Q units by averaging with emission units affected by other Part 217 provisions." *Id.*

Section 217.388(c). The Agency proposed to add language allowing the owner or operator of an affected unit to comply with the control requirements of Subpart Q by operating as a low usage unit. Mot. Amend, Att. A at 3 (proposed new Section 217.388(c)). This proposed new language specifically provides that "[l]ow usage units are not subject to the requirements of this Subpart Q except for the requirements to inspect and maintain the unit pursuant to subsection (d) of this Section, and retain records pursuant to Sections 217.396(b) and (d)." *Id.* "Testing and monitoring do not apply to low usage units." Mot. Amend at 3 (¶6e). The Agency proposed two ways for sources to qualify for this low usage exemption.

First, a source qualifies as low usage under the proposed rule if "[t]he potential to emit (PTE) is no more than 100 TPY NO_x aggregated from all engines and turbines located at the source that are not otherwise exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section, and the NO_x PTE limit is contained in a federally enforceable permit." Mot. Amend, Att. A at 3 (proposed new Section 217.388(c)(1)). Responding to questions at the first hearing, Mr. Kaleel clarified that units complying with the control requirements of the proposed rule and units exempt from those requirements are not counted toward this 100 tpy threshold. Tr.1 at 18-20 (distinguishing low usage from general applicability threshold); *see also* Tr.1 at 47-48 (Wagner response); PC 2 at 4.

Second, a source qualifies as a low usage unit under the proposed rule if "[t]he aggregate bhp-hrs/MW-hrs from all affected units at the source that are not exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section, are less than or equal to . . . 8 mm bhp-hrs or less on an annual basis for engines; and 20,000 MW-hrs or less on an annual basis for turbines." Mot. Amend, Att. A at 3 (proposed Section 217.388(c)(2)). In his testimony on behalf of the Agency, Mr. Kaleel stated that stakeholders proposed these operating limits and that the actual thresholds resulted from negotiations with them. Tr.1 at 48-49. Mr. Kaleel explained the rationale for these thresholds by stating that "a relatively small unit could operate for a lot of hours and not trigger that threshold, and the smaller unit would have fewer emissions. A larger unit would be allowed fewer hours before it triggered that requirement because that larger unit would be expected to have larger emissions." Id. at 49. In responding to questions at the first hearing, Mr. Kaleel clarified that, if a source includes both engines and turbines, it could count those hours separately by limiting annual operation of engines to 8 mm bhp-hrs and turbines to 20,000MW-hrs and still remain a low usage unit. Tr.1 at 21-22. However, Mr. Kaleel also stated that a source could qualify as a low usage unit either through the enforceable NO_x PTE limit in subsection (c)(1), or through the operation limits in subsection (c)(2), but not both. *Id.*; Mot. Amend, Att. A at 3 (proposed Section 217.388(c)).

In her testimony on behalf of IERG, Ms. Hirner stated that the low usage option "will be particularly useful to our industrial members who employ engine-driven electric generators. Because such units typically operate only on an as-needed basis, our members believe that retrofitting these types of units with controls in not practical or cost effective." Hirner Test. at 4; *see also* PC 3 at 2. In his testimony on behalf of IMEA, Mr. Wagner stated that "[a]n emissions

averaging plan offers little compliance relief due to the uniformity in design and operation among most municipal units. Thus, the low usage designation is critical for our member to be able to comply with this Proposed Rule." Wagner Test. at 10; *see also* PC 2 at 4. Noting that proposed Section 217.388(c)(2) allows a source including both engines and turbines to count their annual operating hours separately, Mr. Wagner stated that "[t]his approach provides important flexibility for IMEA's members, which IMEA strongly supports." Wagner Test. at 8. In his testimony on behalf of the Pipeline Group, Mr. McCarthy characterized the low usage criteria as one notable way that the Agency's proposal provides flexibility to affected sources. McCarthy Test. at 5. He further stated that the provision is one of the compliance options "necessary for a workable rule" and one strongly supported by the Pipeline Group. *Id*.

In its first-notice comment, the Agency stated that it proposes to add language to subsection (c) clarifying that "[o]nly units that are not Appendix G units may elect the low usage option." PC 8 at 2. The Agency proposed to clarify language regarding low usage units required to obtain federally enforceable permits including operation limits. *Id*. at 3.

In that first-notice comment, the Agency also stated that it has agreed with IERG and the Pipeline Consortium on language that "would allow low usage units to be included in an emissions averaging plan, if the owner or operator complies with the substantive requirements in Sections 217.394 [Testing and Monitoring] and 217.396 [Recordkeeping and Reporting]." PC 8 at 2. The effect of this agreement is that "the only low usage units that would now be exempt from the substantive testing, monitoring, reporting, and recordkeeping requirements, are those low usage units that are not included in emissions averaging plans." *Id*.

Section 217.388(d). Subsection (d) addresses the owner's or operator's requirement to perform inspections of and maintenance on affected units. 35 Ill. Adm. Code 217.388(d). The Agency's proposed amendments did not generate significant comment or dispute in the course of these proceedings.

Section 217.388(e). In its first-notice comment, the Agency proposed to add a new subsection (e) in order "to clarify that owners or operators may change the method of compliance between the emission concentration limits, emissions averaging plan, and low usage options." PC 8 at 3. Proposed subsection (e)(1) "specifies that the owner or operator must conduct the applicable testing, monitoring, reporting, and recordkeeping requirements for affected units when changing the method of compliance for an affected unit from low usage to compliance with either the emissions concentration limits or inclusion in an emissions averaging plan." *Id*. The same proposed subsection also specifies the "applicable compliance date" as provided in Section 217.394(a)(2) and (a)(3). *Id*. Proposed subsection (e)(2) "specifies that if an affected unit relied on an emissions control device to comply with either the requirements for an emissions concentration limit or emissions averaging plan, and the owner or operator changes the method of compliance for that unit to low usage, the owner or operator must continue to operate the control device." *Id*. The same proposed subsection also provides that, "if the owner or operator is changing the method of compliance to the low usage option, it must complete all outstanding testing and monitoring requirements, even if the testing or monitoring period has not elapsed." *Id*.

Emissions Averaging Plan (Section 217.390)

Section 217.390 allows an owner or operator of certain affected units to comply with the control requirements of Subpart Q through an emissions averaging plan. 35 Ill. Adm. Code 217.390. The section includes language implementing this compliance option. *See* 35 Ill. Adm. Code 217.390(a) – (h).

As noted above, Ms. Hirner characterized emissions averaging as a "useful addition" to the Agency's proposal: "[t]his compliance option allows sources to decide which emission units are the most effective to control, thus allowing over-compliant units to offset emissions from units that are not effective to control." Hirner Test. at 4, PC 3 at 2. She emphasized that the Agency proposes to allow averaging of emissions from Subpart Q units "with emission units affected by other Part 217 provisions." PC 3 at 2; *see also* Hirner Test. at 4, citing Mot. Amend, Att. A at 3 (proposed new Section 217.388(b)(2)). In his testimony on behalf of the Pipeline Group, Mr. McCarthy characterized emissions averaging as one notable way that the Agency's proposal provides flexibility to affected sources. McCarthy Test. at 5. He further stated that the provision is one of the compliance options "necessary for a workable rule" and one strongly supported by the Pipeline Group. *Id.*

The Agency did not propose significant amendments to subsections addressing the following matters: demonstrating compliance with a plan (35 Ill. Adm. Code 217.390(e)); the equation for determining compliance with a plan (35 Ill. Adm. Code 217.390(f)); and compliance for units that use continuous emissions monitoring systems (CEMS) (35 Ill. Adm. Code 217.390(h)). *See* Mot. Amend, Att. A at 6-7, 10; Exh. 2 at 1-2. The Board below summarizes amendments proposed by the Agency to the remaining subsections of Section 217.390 on a subsection-by-subsection basis.

Section 217.390(a). In the provision describing units that commenced operation before January 1, 2002 that may be included in a single emission averaging plan, the Agency proposed to add language under which "owners or operators with affected engines and turbines located at more than one source within a given nonattainment area may develop a companywide emissions averaging plan for the given nonattainment area." Mot. Amend at 3 (¶6d); *see* Mot. Amend, Att. A at 4 (proposed new Section 217.390(a)(1)(A)(ii)), Exh. 2 at 1 (¶4) (correction); *see generally* Kaleel Test. at 6. The Agency also proposed to add new language making eligible for averaging plans "[u]nits that have a compliance date later than the control period for which the averaging plan is being used for compliance." Mot. Amend, Att. A at 4 (proposed new Section 217.390(a)(1)(B)). The Agency also proposed to add language making eligible

> [u]nits which the owner or operator may claim as exempt pursuant to Section 217.386(a) but does not claim as exempt. For as long as such unit is included in an emissions averaging plan, it will be treated as an affected unit and subject to the applicable emission concentration limits, testing, monitoring, recordkeeping and reporting requirements. Mot. Amend, Att. A at 5 (proposed new Section 217.390(a)(1)(C)).

Finally, the Agency also proposed language adding to the types of units may not be included in an averaging plan "[u]nits which the owner or operator is claiming are exempt pursuant to Section 217.386(b) or as low usage units pursuant to Section 217.388(c)." Mot. Amend, Att. A at 5 (proposed new Section 217.390(a)(2)(B)).

In its first-notice comments, the Agency proposed amendments to subsections (a)(1)(A)(i), (a)(1)(A)(ii), and (a)(1)(C) clarifying "that any engine or turbine located at either an Appendix G source or an affected source under Section 217.386(a)(2) or the same company can be included in the averaging plan even if the unit being included is not required to comply with the requirements of Subpart Q." PC 8 at 3-4. The Agency also proposed to clarify that "[a] unit that is not required to comply with the requirements of Subpart Q, but is included in an emissions averaging plan is not subject to the 'once-in-always-in' provision of subsection (d) of Section 217.386." *Id*. at 4.

Also in that first-notice comment, the Agency proposed to add a new subsection (a)(1)(D) allowing "inclusion of affected units that meet the low usage requirements in emissions averaging plans, if they comply with the aggregate limits for low usage units, the testing and monitoring requirements for affected units, and the recordkeeping and reporting requirements for both types of units." PC 8 at 4.

Also in that first-notice comment, the Agency proposed to amend subsection (a)(2)(A) by providing additional language on the "same purpose" for which a replacement unit may used in order to be included in an averaging plan. PC 8 at 4. The Agency states that "[t]he 'same purpose' criteria is important to insure that a new unit will not debottleneck a process in such a way as to create additional NO_x emissions from other emissions units not covered by this Subpart." *Id*. Specifically, the Agency proposed that, in addition to being used for the same purpose, the new unit "must have substantially equivalent or less process capacity or be permitted for less NO_x emissions on an annual basis than the actual NO_x emissions as unit or units that are replaced." *Id*. The Agency elaborated that an appropriate replacement unit either has equivalent or less process capacity regardless of emissions or has lower emissions regardless of process capacity. *Id*. at 4-5. The Agency further stated that, "[f]or natural gas transmission and storage facilities, the substantially equivalent process capacity of the replacement unit may be demonstrated in accordance with 18 C.F.R. 2.55(b), which allows replacements that 'have a substantially equivalent delivery capacity.'" *Id*. at 4.

Again in its first-notice comment, the Agency proposed at subsection (a)(2)(B) to strike language excluding low usage units from emissions averaging plans in order to be consistent with the proposal to allow them to be included in those plans. PC 8 at 5.

Section 217.390(b). The prefatory paragraph of Section 217.390(b) now provides in part that "[a]n owner or operator must submit an emissions averaging plan to the Agency by the applicable compliance date set forth in Section 217.392." 35 Ill. Adm. Code 217.390(b). The subsection continues by describing information the submitted plan must include. *Id.* In its "Clarification and *Errata* Sheet," the Agency stated that this "submission date needs to be clarified to include an option for an owner or operator to change their method of compliance after the initial compliance date." Exh. 2 at 2 (¶5). Specifically, the Agency proposed to add to

the current language cited above that the plan may be submitted "by May 1 of the year in which the owner or operator is using a new emissions averaging plan to comply." *Id.*

The Agency also proposed in Exhibit 2 to provide the effective date of averaging plans. After re-numbering existing subsection (b)(1) and (b)(2) to subsection (b)(1)(A) and (B)(1)(B), respectively, the Agency proposes to add a new Section 217.390(b)(2):

Those plans will be effective as follows:

A) An initial plan for units required to comply by January 1, 2008, is effective January 1, 2008;

B) An initial plan for units required to comply by May 1, 2010, is effective May 1, 2010 for those units;

C) A new plan submitted pursuant to subsection (b) of this Section but not submitted by January 1, 2008 or May 1, 2010 is effective retroactively to January 1 of the applicable year;

D) An amended plan submitted pursuant to subsection (c) of this Section is effective retroactively to January 1 of the applicable year; or

E) An amended plan submitted pursuant to subsection (d) of this Section is effective on the date it is received by the Agency. Exh. 2 at 2.

Section 217.390(c). Section 217.390(c) allows an owner or operator to amend an averaging plan only once per calendar year. 35 Ill. Adm. Code 217.390(c). The Agency proposed to add to this subsection language providing that "[a]n amended plan must include the information from subsection (b)(1) and may, but is not limited to changing the group of affected units or reflecting changes in the operation of the affected units." Exh. 2 at 2. The Agency also proposed to add language providing that amended plans submitted to the Agency become effective as set forth in the proposed new subsection (b)(2). *Id.* at 3.

Section 217.390(d). Subsection (d) provides that, notwithstanding subsection (c) allowing an emissions averaging plan to be amended only once per calendar year, "an owner or operator, and the buyer, if applicable, must submit an updated emissions averaging plan or plans to the Agency within 60 days if a unit that is listed in an emissions averaging plan is sold or taken out of service." 35 Ill. Adm. Code 217.390(d); *see* 35 Ill. Adm. Code 217.390(c). The Agency proposed to re-number this language as subsection (d)(1). Mot. Amend, Att. A at 6. The Agency also proposed to add as subsection (d)(2) language providing that, notwithstanding subsection (c), an owner or operator, and the buyer, if applicable, "[m]ay amend its emissions averaging plan to include another unit within 30 days of discovering that the unit no longer qualifies as an exempt unit pursuant to Section 217.386(b) or as a low usage unit pursuant to Section 217.388(c)." Mot. Amend, Att. A at 6.

In its first-notice comment, the Agency proposed to amend subsection (d) first by adding the term "seller" in order to "to require that all applicable averaging plans are updated when a unit is added to a source." PC 8 at 5. The Agency also proposed to add a new subsection (d)(3) to provide a deadline "for submitting an averaging plan after the purchase of a new unit." *Id*.

Section 217.390(g). Section 217.390(g)(6) establishes, for "non-Appendix G units used in an emissions averaging plan," the allowable emissions rate to be used in determining allowable emissions under subsection (g)(2). 35 Ill. Adm. Code 217.390(g)(6); *see* 35 Ill. Adm. Code 217.390(g)(2). Specifically, that rate is "the higher of the actual NO_x emissions as determined by testing or monitoring data, or the applicable uncontrolled NO_x emissions factor from Compilation of Air Pollutant Emission Factors: AP-42, Volume I: Stationary Point and Areas Sources, as incorporated by reference in Section 217.104." 35 Ill. Adm. Code 217.390(g)(6).

The Agency first proposed to amend subsection (g)(6) by providing that it applies not to "non-Appendix G units used in an emissions averaging plan," but to "units that have a later compliance date." Mot. Amend, Att. A at 9. Second, the Agency proposed that the allowable emissions rate must be the higher of the actual NO_x emissions or the applicable uncontrolled NO_x emissions factor "[p]rior to the applicable compliance date pursuant to Section 217.392." Mot. Amend, Att. A at 9; *see* 35 Ill. Adm. Code 217.390(g)(6). Finally, the Agency proposed to add language providing that, "[o]n and after the unit's applicable compliance date pursuant to section 217.392, the applicable emissions concentration for that type of unit pursuant to Section 217.388(a)." Mot. Amend, Att. A at 9; *see* 35 Ill. Adm. Code 217.388(a).

In its first-notice comment, the Agency proposed in subsection (g)(2) to add the phrase "as applicable" to the definition of the variable "E_{all}" in order to clarify that the allowable NO_x emission rate may be determined differently depending on the circumstance. PC 8 at 5. The Agency also proposed to add a cross reference to the proposed new subsection (g)(7) in the definition of the variable $C_{d(all)}$, or allowable concentration of NO_x. *Id*. That proposed new subsection (g)(7) specifies that, for low usage units included in an emissions averaging plan, "the higher of AP-42 or the tested actual emissions must be used for determining the allowable NO_x emissions rate." *Id*. at 6.

Compliance (Section 217.392)

Subsection (a). Section 217.392 now provides in its entirety that "[o]n and after January 1, 2008, an owner or operator of an affected engine listed in Appendix G may not operate the affected engine unless the requirements of this Subpart Q are met or the affected engine is exempt pursuant to Section 217.386(b)." 35 Ill. Adm. Code 217.392; *see* 35 Ill. Adm. Code 217.386(b), 35 Ill. Adm. Code Appendix G. The Agency proposed to re-number this provision as Section 217.392(a). Mot. Amend, Att. A at 10.

In its first-notice comment, the Agency noted that the proposal for First Notice included language regarding exemption under Section 217.386(b). PC 8 at 6. The Agency argues that, because Appendix G units are not eligible for an exemption, this language should be struck. *Id*.

Subsection (b). In its amended proposal, the Agency sought to add a subsection (b) establishing a compliance date of May 1, 2010 for RACT units. Mot. Amend at 3 (¶6b); Kaleel Test. at 7. Specifically, the Agency proposed to add a new Section 217.392(b) providing that, "[o]n and after May 1, 2010, an owner or operator of a unit identified by Section 217.386 (a)(2), and that is not listed in Appendix G, may not operate the affected unit unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b)." Mot. Amend, Att. A at 10; *see* Exh. 2 at 3 (¶6) (correction).

Subsection (c). The Agency also proposed to add as subsection (c) a compliance option allowing owners and operators under certain circumstances to use NO_x trading program allowances to satisfy the control requirements of Subpart Q. Kaleel Test. at 6; Mot. Amend, Att. A at 10-11 (proposed new Section 217.392(c)). The Agency's proposed language defines a NO_x allowance as "an allowance used to meet the requirements of a NO_x trading program administered by USEPA where one allowance is equal to one ton of NO_x emissions." Mot. Amend, Att. A at 10-11 (proposed new Section 217.392(c)). In his prefiled testimony on behalf of the Agency, Mr. Kaleel stated that "[t]his option is included in the proposal at the request of stakeholders and will again provide increased operating flexibility and will reduce compliance costs." Kaleel Test. at 7; Tr.1 at 51.

The Agency's proposal lists three circumstances, all of which must apply for NO_x allowances to be used. First, the allowances may be used only "[f]or a unit that is not listed in Appendix G." Mot. Amend, Att. A at 11 (proposed new Section 217.392(c)(1)(C)). Second, there must occur "[a]n anomalous or unforeseen operating scenario inconsistent with historical operation for a particular ozone season or calendar year that causes an exceedance of an emissions or operating hour limitation." Mot. Amend, Att. A at 11 (proposed new Section 217.392(c)(1)(A)); *see* Tr.1 at 51, Kaleel Test. at 7, *see also* Exh. 2 at 3 (¶7) (correction). In responding to questions at the first hearing, Mr. Kaleel recognized that operators of engines and turbines may face unforeseen circumstances, and he indicated that the Agency included NO_x allowances in its proposal in order to address those. Tr.1 at 54.

Third, the owner or operator may use NO_x allowances "[t]o achieve compliance for no more than two events in any rolling five-year period." Mot. Amend, Att. A at 11 (proposed new Section 217.392(c)(1)(B)); *see* Kaleel Test. at 7, *see also* Exh. 2 at 3 (¶8) (correction). In responding to questions at the first hearing, Mr. Kaleel suggested that exceedances occurring more often than twice in any rolling five-year period may not be truly unforeseeable and may require "better planning" on the part of owners and operators. Tr.1 at 51. He indicated that the Agency did not want this option to become "open-ended" and felt that the option should not become "an unlimited way of complying with the rule." *Id*.

The Agency also proposed language in subsection (c)(3) on surrendering NO_x allowances. Specifically, "[t]he applicable type of NO_x allowances must be used, that is, annual allowances must be used for exceedances of an annual limit and ozone season allowances must be used for exceedances of a seasonal limit." Kaleel Test. at 7; *see* Mot. Amend, Att. A at 11 (proposed new Section 217.392(c)(2)). The Agency also proposes that, when an affected unit exceeds a low usage limitation, "the owner or operator of the affected unit must calculate the

NO_x emissions resulting from the number of hours that exceeded the operating hour low usage limit and surrender to the Agency one NO_x allowance for each ton or portion of a ton of NO_x that was calculated." Mot. Amend, Att. A at 11 (proposed new Section 217.392(c)(2)).

In addition, the Agency proposed to require that the owner or operator must file with the Agency "a report documenting the circumstances that required the use of NO_x allowances and identify what actions will be taken in subsequent years to address these circumstances." Mot. Amend, Att. A at 11 (proposed new Section 217.392(c)(3)). This proposed requirement included deadlines for submitting those reports: "by October 31 for exceedances during the ozone season and March 1 for exceedances of the emissions concentration limits, the annual emissions averaging plan limits, or low usage limitations." *Id.*

In his testimony on behalf of IMEA, Mr. Wagner stated that, for his association, "[a]n emission averaging plan offers little compliance relief due to the uniformity in design and operation among most municipal units." Wagner Test. at 10. He further stated that "[m]any of the IMEA members' units, particularly the older units, will be forced to operate as low usage units because it is economically not feasible to modify these units to comply with the emission requirements of the Proposed Rule, particularly given that these units operate sporadically." *Id.* at 8-9. Mr. Wagner suggested, however, that the benefit of the low usage option is significantly reduced by "the substantial reduction on permitted capacity that some members will likely face." *Id.* at 11. He stated that allowing use of NO_x allowances addresses this concern. *Id.*, PC 2 at 5. He argued that "[t]he low usage compliance option would simply not be workable without the NO_x allowance provision." Wagner Test. at 11-12 (citing flexibility); PC 2 at 5. He summarized by stating that provision for low usage operation and the use of NO_x allowances "are considered by IMEA to be absolutely essential." Wagner Test. at 13; PC 2 at 7.

In her testimony on behalf of IERG, Ms. Hirner characterized the ability to use NO_x allowances as an "important component" of the Agency's proposed rule. Hirner Test. at 5. She states that "IERG supports the ability for regulated sources to utilize the emissions marketplace when compliance difficulties arise. Such an approach is beneficial to the environment as well, as NO_x emission allowances, in an amount equivalent to the compliance excursion, would be retired from the allowance pool." *Id.*; PC 3 at 3.

In his testimony on behalf of the Pipeline Group, Mr. McCarthy characterized the limited use of NO_x emissions allowances in anomalous circumstances as one notable way in which the Agency's proposal provides flexibility to affected sources. McCarthy Test. at 5. He further stated that the provision is one of the compliance options "necessary for a workable rule" and one strongly supported by the Pipeline Group. *Id.*

In its first-notice comment, the Agency argued that, as a result of the remand of the Clean Air Interstate Rule (CAIR) to USEPA by the U.S. Court of Appeals, an entity other than USEPA could administer the CAIR Program. PC 8 at 6. Accordingly, the Agency proposed in subsection (c) to replace a reference to a trading program "administered by USEPA" with a reference to a program "in which the State of Illinois participates." *Id.*

Also in its first-notice comment, the Agency proposed adding a new subsection (c)(1)(C) to clarify "what constitutes an event for the purpose of determining whether an owner or operator is in compliance with the requirements of subsection (c)(1)(B) limiting the use of allowances to two events in any rolling five-year period." PC 8 at 6-7.

Also in its first-notice comment, the Agency proposed to make subsection (c)(2) more readable by breaking it into subsections. PC 8 at 7. The Agency also proposed to add a subsection (c)(2)(B) clarifying that, "when a low usage unit is included in an averaging plan and there is noncompliance with a limitation in that plan, an owner or operator who chooses to use NO_x allowances must calculate the emissions using the allowable emissions concentration from Section 217.388, rather than the AP-42 factor or uncontrolled emissions." *Id*. The Agency also proposed to add a subsection (c)(2)(E) to clarify that, if the remand of CAIR results in elimination of the annual NO_x trading program, "a NO_x ozone season allowance can be used." *Id*.

Testing and Monitoring (Section 217.394)

Section 217.394 includes provisions relating to initial performance tests of affected units (35 Ill. Adm. Code 217.394(a)), subsequent performance tests (35 Ill. Adm. Code 217.394(b)), testing procedures (35 Ill. Adm. Code 217.394(c)), monitoring (35 Ill. Adm. Code 217.394(d)), and units that use CEMS (35 Ill. Adm. Code 217.394(e)).

In his prefiled testimony on behalf of the Agency, Mr. Kaleel claimed that the Agency's proposal "provides a flexible approach for meeting the requirements for testing and monitoring." Kaleel Test. at 7. He stated that, "[i]n general, affected units must conduct a compliance test by the applicable compliance date." *Id.*; *see* Mot. Amend, Att. A at 12 (proposed Section 217.394(a)(2)). He further stated that "[a]ffected units that operate intermittently do not need to be tested until after they have operated at least 876 hours in a year." Kaleel Test. at 7, *see* Mot. Amend, Att. A at 12 (proposed Section 217.394(a)(2)). Mr. Kaleel also stated that "[u]nits that operate less than 876 hours per calendar year can be tested at the owner's or operator's choosing any time within the first five years after the applicable compliance date." Kaleel Test. at 7; *see* Mot. Amend, Att. A at 12 (proposed Section 217.394(a)(3)).

Although the Agency did not propose significant amendments to subsections (b), (c), (d), or (e), it proposed a new subsection (f) regarding low usage units. *See* Mot. Amend, Att. A at 14. That new subsection clarifies that, "[t]he testing and monitoring requirements of this Section do not apply to affected units in compliance with the requirements of the low usage limitations pursuant to Section 217.388(c) or low usage units using NO_x allowances to comply with the requirements of this Subpart pursuant to Section 217.392(c)." *Id*. (proposed new Section 217.394(f)); *see* Mot. Amend at 3 (¶6e), Tr.1 at 36 (Kaleel testimony). The Agency also proposed to require that, if the Agency or USEPA determines that "it is necessary to conduct testing to demonstrate compliance with Section 217.388, the owner or operator of a unit must, at his or her own expense, conduct the test in accordance with the applicable test methods and procedures specified in this Section within 90 days after receipt of a notice to test from the Agency or USEPA." Mot. Amend, Att. A at 14 (proposed new Section 217.394(f)); *see* Tr.1 at 36 (Kaleel testimony).

In its first-notice comment, the Agency proposed in subsection (d)(1) to add the term "utilizing" in order to clarify the application of ASTM D6522-00. PC 8 at 7. In subsection (e), the Agency responded to the comment filed by Dominion Resources Services by proposing to allow the use of CEMS complying with the provisions of 40 C.F.R. 75 in addition to units complying with 40 C.F.R. 60. PC 8 at 7; *see* PC 7. The Agency also proposed to amend subsection (f) to "ensure that low usage nits included in emissions averaging plans comply with the substantive provisions for testing, monitoring, reporting and recordkeeping that apply to other affected units." PC 8 at 7.

Recordkeeping and Reporting (Section 217.396)

Section 217.396 now provides requirements with regard to recordkeeping and reporting. 35 Ill. Adm. Code 217.396. Recordkeeping requirements now apply to an owner or operator of an Appendix G unit or a unit included in an emissions averaging plan. 35 Ill. Adm. Code 217.396(a). The Agency first proposed to amend this subsection by clarifying that its requirements apply to the owner or operator of "a unit included in an emissions averaging plan or an affected unit that is not exempt pursuant to Section 217.386(b) and is not subject to the low usage exemption of Section 217.388(c)." Mot. Amend, Att. A at 14 (proposed amendment to existing Section 217.396(a)).

Section 217.396(a) requires maintenance of "records that demonstrate compliance with the requirements of Subpart Q which include, but are not limited to" ten specified items. 35 Ill. Adm. Code 217.396(a)(1) – (10). The Agency proposed to add an eleventh required record: "[a]ny NO_x allowance reconciliation reports submitted pursuant to Section 217.392(c)(3)." Mot. Amend, Att. A at 15 (proposed new Section 217.396(a)(11)).

In its first-notice comment, the Agency proposed to amend subsection (a) to clarify "that the recordkeeping requirements affect any unit that is included in an emissions averaging plan even if that unit would not otherwise be subject to these requirements." PC 8 at 7-8.

Section 217.396(c) places reporting requirements on the owner or operator of an affected unit. 35 Ill. Adm. Code 217.396(c)(1) – (5). The Agency proposed to add a new Section 217.396(c)(6) providing that, if an owner or operator uses NO_x allowances to comply with the requirements of Section 217.388, he or she must submit "reconciliation report as required by Section 217.392(c)(3)." Mot. Amend, Att. A at 17 (proposed new Section 217.396(c)(6)).

In addition, the Agency proposed to add a new Section 217.396(d) requiring that low usage units "maintain records that demonstrate that they continue to qualify for that exemption." Tr.1 at 36 (Kaleel testimony). Specifically, the proposed language requires that the owner or operator of a low usage unit must maintain a record of NO_x emissions for each calendar year if the unit complies through an enforceable limit on NO_x PTE. Mot. Amend, Att. A at 17 (proposed new Section 217.396(d)(1)). The proposed language also requires a record of bhp or MW hours operated each calendar year if the unit complies through an operation limit. *Id.* (proposed new Section 217.396(d)(2)). The proposed language also requires the maintenance

and submission of any NO_x allowance reconciliation reports if the unit relies upon those allowances for compliance. *Id.* (proposed new Section 217.396(d)(3)).

In its post-hearing comment, the Agency responds to a comment by Dominion Resources Services by proposing to add a subsection (e). That proposed new subsection provides that "units with CEMS that comply with 40 C.F.R. 75 are not subject to other reporting and recordkeeping requirements besides those on Part 75 unless the units are included in an emissions averaging plan." *Id.*; *see* PC 7.

CONCLUSION

The Board proposes for second notice amendments to the Board's regulations governing emissions of NO_x in Parts 201, 211, and 217 (35 Ill. Adm. Code 201, 211, 217). Substantively, the Board amends its first-notice proposal to reflect changes submitted in the Agency's first-notice comment.

ORDER

The Board directs the Clerk to file the following proposed amendments with the Joint Committee on Administrative Rules for second-notice review. Proposed additions are underlined, and proposed deletions appear stricken.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER a: PERMITS AND GENERAL PROVISIONS

PART 201
PERMITS AND GENERAL PROVISIONS

SUBPART A: DEFINITIONS

Section
201.101 Other Definitions
201.102 Definitions
201.103 Abbreviations and Units
201.104 Incorporations by Reference

SUBPART B: GENERAL PROVISIONS

Section
201.121 Existence of Permit No Defense
201.122 Proof of Emissions
201.123 Burden of Persuasion Regarding Exceptions
201.124 Annual Report

SUBPART C: PROHIBITIONS

SUBPART D: PERMIT APPLICATIONS AND REVIEW PROCESS

SUBPART E: SPECIAL PROVISIONS FOR OPERATING PERMITS FOR CERTAIN SMALLER SOURCES

SUBPART F: CAAPP PERMITS

SUBPART G: EXPERIMENTAL PERMITS (Reserved)

SUBPART H: COMPLIANCE PROGRAMS AND PROJECT COMPLETION SCHEDULES

SUBPART I: MALFUNCTIONS, BREAKDOWNS OR STARTUPS

SUBPART J: MONITORING AND TESTING

SUBPART K: RECORDS AND REPORTS

Section
201.301 Records
201.302 Reports

SUBPART L: CONTINUOUS MONITORING

Section
201.401 Continuous Monitoring Requirements
201.402 Alternative Monitoring
201.403 Exempt Sources
201.404 Monitoring System Malfunction
201.405 Excess Emission Reporting
201.406 Data Reduction
201.407 Retention of Information
201.408 Compliance Schedules

201.APPENDIX A Rule into Section Table
201.APPENDIX B Section into Rule Table
201.APPENDIX C Past Compliance Dates

AUTHORITY: Implementing Sections 10, 39, and 39.5 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/10, 27, 28.5, 39, and 39.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Part I: General Provisions, in R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg.30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13579; amended in R82-1 (Docket A) at 10 Ill. Reg. 12628, effective July 7, 1986; amended in R87-38 at 13 Ill. Reg. 2066, effective February 3, 1989; amended in R89-7(A) at 13 Ill. Reg. 19444, effective December 5, 1989; amended in R89-7(B) at 15 Ill. Reg. 17710, effective November 26, 1991; amended in R93-11 at 17 Ill. Reg. 21483, effective December 7, 1993; amended in R94-12 at 18 Ill. Reg. 15002, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15760, effective October 17, 1994; amended in R96-17 at 21 Ill. Reg. 7878, effective June 17, 1997; amended in R98-13 at 22 Ill. Reg. 11451, effective June 23, 1998; amended in R98-28 at 22 Ill. Reg. 11823, effective July 31, 1998; amended in R02-10 at 27 Ill. Reg. 5820, effective March 21, 2003; amended in R05-19 and R05-20 at 30 Ill. Reg. 4901, effective March 3, 2006; amended in R07-19 at 32 Ill. Reg. _____, effective _____.

SUBPART C: PROHIBITIONS

Section 201.146 Exemptions from State Permit Requirements

Construction or operating permits, pursuant to Sections 201.142, 201.143 and 201.144 of this Part, are not required for the classes of equipment and activities listed below in this Section. The

permitting exemptions in this Section do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements, including the obligation to obtain a permit pursuant to Sections 9.1(d) and 39.5 of the Act, sections ~~Sections~~ 165, 173 and 502 of the Clean Air Act or any other applicable permit or registration requirements.

a) Air contaminant detectors or recorders, combustion controllers or combustion shutoffs;

b) Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

c) Each fuel burning emission unit for indirect systems and for heating and reheating furnace systems used exclusively for residential, or commercial establishments using gas and/or fuel oil exclusively with a design heat input capacity of less than 14.6 MW (50 mmbtu/hr), except that a permit shall be required for any such emission unit with a design heat input capacity of at least 10 mmbtu/hr that was constructed, reconstructed or modified after June 9, 1989 and that is subject to 40 CFR 60, subpart ~~Subpart~~ D;

d) Each fuel burning emission unit other than those listed in subsection (c) of this Section for direct systems used for comfort heating purposes and indirect heating systems with a design heat input capacity of less than 2930 kW (10 mmbtu/hr);

e) Internal combustion engines or boilers (including the fuel system) of motor vehicles, locomotives, air craft, watercraft, lift trucks and other vehicles powered by nonroad engines;

f) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated laboratory fume hoods, vacuum producing devices and control devices installed primarily to address potential accidental releases;

g) Coating operations located at a source using not in excess of 18,925 l (5,000 gal) of coating (including thinner) per year;

h) Any emission unit acquired exclusively for domestic use, except that a permit shall be required for any incinerator and for any fuel combustion emission unit using solid fuel with a design heat input capacity of 14.6 MW (50 mmbtu/hr) or more;

i) Any stationary internal combustion engine with a rated power output of less than 1118 kW (1500 bhp~~horsepower~~) or stationary turbine, except that a permit shall be required for the following:

1) Any internal combustion engine with a rating at equal to or greater than 500 bhp output that is subject to the control requirements of 35 Ill. Adm. Code 217.388(a) or (b); or

2) Any ~~any~~ stationary gas turbine engine with a rated heat input at peak load of 10.7 gigajoules/hr (10 mmbtu/hr) or more that is constructed, reconstructed or modified after October 3, 1977 and that is subject to requirements of 40 CFR 60, subpart ~~Subpart~~ GG;

j) Rest room facilities and associated cleanup operations, and stacks or vents used to prevent the escape of sewer gases through plumbing traps;

k) Safety devices designed to protect life and limb, provided that a permit is not otherwise required for the emission unit with which the safety device is associated;

l) Storage tanks for liquids for retail dispensing except for storage tanks that are subject to the requirements of 35 Ill. Adm. Code 215.583(a)(2), 218.583(a)(2) or 219.583(a)(2);

m) Printing operations with aggregate organic solvent usage that never exceeds 2,839 l (750 gal) per year from all printing lines at the source, including organic solvent from inks, dilutents, fountain solutions and cleaning materials;

n) Storage tanks of:

1) Organic liquids with a capacity of less than 37,850 l (10,000 gal), provided the storage tank is not used to store any material listed as a hazardous air pollutant pursuant to section ~~Section~~ 112(b) of the Clean Air Act, and provided the storage tank is not subject to the requirements of 35 Ill. Adm. Code 215.583(a)(2), 218.583(a)(2) or 219.583(a)(2);

2) Any size containing exclusively soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, aqueous salt solutions or aqueous caustic solutions, provided an organic solvent has not been mixed with such materials; or

3) Any size containing virgin or re-refined distillate oil, hydrocarbon condensate from natural gas pipeline or storage systems, lubricating oil or residual fuel oils;~~.~~

o) Threaded pipe connections, vessel manways, flanges, valves, pump seals, pressure relief valves, pressure relief devices and pumps;

p) Sampling connections used exclusively to withdraw materials for testing and analyses;

q) All storage tanks of Illinois crude oil with capacity of less than 151,400 l (40,000 gal) located on oil field sites;

r) All organic material-water single or multiple compartment effluent water separator facilities for Illinois crude oil of vapor pressure of less than 34.5 kPa absolute (5 psia);

s) Grain-handling operations, exclusive of grain-drying operations, with an annual grain through-put not exceeding 300,000 bushels;

t) Grain-drying operations with a total grain-drying capacity not exceeding 750 bushels per hour for 5% moisture extraction at manufacturer's rated capacity, using the American Society of Agricultural Engineers Standard 248.2, Section 9, Basis for Stating Drying Capacity of Batch and Continuous-Flow Grain Dryers;

u) Portable grain-handling equipment and one-turn storage space;

v) Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F);

w) Coin-operated dry cleaning operations;

x) Dry cleaning operations at a source that consume less than 30 gallons per month of perchloroethylene;

y) Brazing, soldering, wave soldering or welding equipment, including associated ventilation hoods;

z) Cafeterias, kitchens, and other similar facilities, including smokehouses, used for preparing food or beverages, but not including facilities used in the manufacturing and wholesale distribution of food, beverages, food or beverage products, or food or beverage components;

aa) Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sand blast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, wood or wood products, where such equipment is either:

1) Used for maintenance activity;

2) Manually operated;

3) Exhausted inside a building; or

4) Vented externally with emissions controlled by an appropriately operated cyclonic inertial separator (cyclone), filter, electro-static precipitor or a scrubber;~~.~~

bb) Feed mills that produce no more than 10,000 tons of feed per calendar year, provided that a permit is not otherwise required for the source pursuant to Section 201.142, 201.143 or 201.144;

cc) Extruders used for the extrusion of metals, minerals, plastics, rubber or wood, excluding:

1) Extruders used in the manufacture of polymers;

2) Extruders using foaming agents or release agents that contain volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act; and

3) Extruders processing scrap material that was produced using foaming agents containing volatile organic materials or Class I or II substances subject to the requirements of Title VI of the Clean Air Act;~~.~~

dd) Furnaces used for melting metals, other than beryllium, with a brim full capacity of less than 450 cubic inches by volume;

ee) Equipment used for the melting or application of less than 22,767 kg/yr (50,000 lbs/yr) of wax to which no organic solvent has been added;

ff) Equipment used for filling drums, pails or other packaging containers, excluding aerosol cans, with soaps, detergents, surfactants, lubricating oils, waxes, vegetable oils, greases, animal fats, glycerin, sweeteners, corn syrup, aqueous salt solutions or aqueous caustic solutions, provided an organic solvent has not been mixed with such materials;

gg) Loading and unloading systems for railcars, tank trucks, or watercraft that handle only the following liquid materials: soaps, detergents, surfactants, lubricating oils, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, aqueous salt solutions or aqueous caustic solutions, provided an organic solvent has not been mixed with such materials;

hh) Equipment used for the mixing and blending of materials at ambient temperatures to make water based adhesives, provided each material mixed or blended contains less than 5% organic solvent by weight;

ii) Die casting machines where a metal or plastic is formed under pressure in a die located at a source with a through-put of less than 2,000,000 lbs of metal or plastic per year, in the aggregate, from all die casting machines;

jj) Air pollution control devices used exclusively with other equipment that is exempt from permitting, as provided in this Section;

kk) An emission unit for which a registration system designed to identify sources and emission units subject to emission control requirements is in place, such as the registration system found at 35 Ill. Adm. Code 218.586 (Gasoline Dispensing Operations - Motor Vehicle Fueling Operations) and 35 Ill. Adm. Code 218, Subpart HH (Motor Vehicle Refinishing);

ll) Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy;

mm) Equipment used for hydraulic or hydrostatic testing;

nn) General vehicle maintenance and servicing activities conducted at a source, motor vehicle repair shops, and motor vehicle body shops, but not including:

1) Gasoline fuel handling; and

2) Motor vehicle refinishing;~~.~~

oo) Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing, provided no organic solvent has been added to the water;

pp) Administrative activities including, but not limited to, paper shredding, copying, photographic activities and blueprinting machines. This does not include incinerators;

qq) Laundry dryers, extractors, and tumblers processing that have been cleaned with water solutions of bleach or detergents that are:

1) Located at a source and process clothing, bedding and other fabric items used at the source, provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the VOM emissions from use of cleaning materials;

2) Located at a commercial laundry; or

3) Coin operated;~~.~~

rr) Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials, including operation of fixed vacuum cleaning systems specifically for such purposes, but not including use of cleaning materials that contain organic solvent;

ss) Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems;

tt) Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units;

uu) Piping and storage systems for natural gas, propane and liquefied petroleum gas;

vv) Water treatment or storage systems, as follows:

1) Systems for potable water or boiler feedwater;

2) Systems, including cooling towers, for process water, provided that such water has not been in direct or indirect contact with process streams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to ~~Section~~ section 112(b) of the Clean Air Act;~~.~~

ww) Lawn care, landscape maintenance and grounds keeping activities;

xx) Containers, reservoirs or tanks used exclusively in dipping operations to coat objects with oils, waxes or greases, provided no organic solvent has been mixed with such materials;

yy) Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 USC 1261 et seq.), where the product is used at a source in the same manner as normal consumer use;

zz) Activities directly used in the diagnosis and treatment of disease, injury or other medical condition;

aaa) Activities associated with the construction, repair or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks and other vehicles related to the control of fugitive emissions of such roads or other areas;

bbb) Storage and handling of drums or other transportable containers, where the containers are sealed during storage and handling;

ccc) Activities at a source associated with the maintenance, repair or dismantlement of an emission unit or other equipment installed at the source, not including the

shutdown of the unit or equipment, including preparation for maintenance, repair or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup;

ddd) Equipment used for corona arc discharge surface treatment of plastic with a power rating of 5 kW or less or equipped with an ozone destruction device;

eee) Equipment used to seal or cut plastic bags for commercial, industrial or domestic use;

fff) Each direct-fired gas dryer used for a washing, cleaning, coating or printing line, excluding:

1) Dryers with a rated heat input capacity of 2930 kW (10 mmbtu/hr) or more; and

2) Dryers for which emissions other than those attributable to combustion of fuel in the dryer, including emissions attributable to use or application of cleaning agents, washing materials, coatings or inks or other process materials that contain volatile organic material are not addressed as part of the permitting of such line, if a permit is otherwise required for the line;

ggg) Municipal solid waste landfills with a maximum total design capacity of less than 2.5 million Mg or 2.5 million m^3 that are not required to install a gas collection and control system pursuant to 35 Ill. Adm. Code 220 or 800 through 849 or Section 9.1 of the Act; ~~and~~

hhh) Replacement or addition of air pollution control equipment for existing emission units in circumstances where:

1) The existing emission unit is permitted and has operated in compliance for the past year;

2) The new control equipment will provide equal or better control of the target pollutants;

3) The new control device will not be accompanied by a net increase in emissions of any non-targeted criteria air pollutant;

4) Different State or federal regulatory requirements or newly proposed regulatory requirements will not apply to the unit; and
BOARD NOTE: All sources must comply with underlying federal regulations and future State regulations.

5) Where the existing air pollution control equipment had required monitoring equipment, the new air pollution control equipment will be equipped with the instrumentation and monitoring devices that are typically installed on the new equipment of that type.
BOARD NOTE: For major sources subject to Section 39.5 of the Act, where the new air pollution control equipment will require a different compliance determination method in the facility's CAAPP permit, the facility may need a permit modification to address the changed compliance determination method;~~.~~

iii) Replacement, addition, or modification of emission units at facilities with federally enforceable State operating permits limiting their potential to emit in circumstances where:

1) The potential to emit any regulated air pollutant in the absence of air pollution control equipment from the new emission unit, or the increase in the potential to emit resulting from the modification of any existing emission unit, is less than 0.1 pound per hour or 0.44 tons per year;

2) The raw materials and fuels used or present in the emission unit that cause or contribute to emissions, based on the information contained in Material Safety Data Sheets for those materials, do not contain equal to or greater than 0.01 percent by weight of any hazardous air pollutant as defined under ~~Section~~ section 112(b) of the federal Clean Air Act;

3) The emission unit or modification is not subject to an emission standard or other regulatory requirement pursuant to ~~Section~~ section 111 of the federal Clean Air Act;

4) Potential emissions of regulated air pollutants from the emission unit or modification will not, in combination with emissions from existing units or other proposed units, trigger permitting requirements under Section 39.5, permitting requirements under ~~Section~~ section 165 or 173 of the federal Clean Air Act, or the requirement to obtain a revised federally enforceable State operating permit limiting the source's potential to emit; and

5) The source is not currently the subject of a Non-compliance Advisory, Clean Air Act Section 114 Request, Violation Notice, Notice of Violation, Compliance Commitment Agreement, Administrative Order, or civil or criminal enforcement action, related to the air emissions of the source;~~.~~

jjj) Replacement, addition, or modification of emission units at permitted sources that are not major sources subject to Section 39.5 of the Act and that do not have a federally enforceable State ~~state~~ operating permit limiting their potential to emit, in circumstances where:

1) The potential to emit of any regulated air pollutant in the absence of air pollution control equipment from the new emission unit, or the increase in the potential to emit resulting from the modification of any existing emission unit is either:

A) Less than 0.1 pound per hour or 0.44 tons per year; or

B) Less than 0.5 pound per hour, and the permittee provides prior notification to the Agency of the intent to construct or install the unit. The unit may be constructed, installed or modified immediately after the notification is filed;

2) The emission unit or modification is not subject to an emission standard or other regulatory requirement under ~~Section~~ section 111 or 112 of the federal Clean Air Act;

3) Potential emissions of regulated air pollutants from the emission unit or modification will not, in combination with the emissions from existing units or other proposed units, trigger permitting requirements under Section 39.5 of the Act or the requirement to obtain a federally enforceable permit limiting the source's potential to emit; and

4) The source is not currently the subject of a Non-compliance Advisory, Clean Air Act Section 114 Request, Violation Notice, Notice of Violation, Compliance Commitment Agreement, Administrative Order, or civil or criminal enforcement action, related to the air emissions of the source;~~.~~

kkk) The owner or operator of a CAAPP source is not required to obtain an air pollution control construction permit for the construction or modification of an emission unit or activity that is an insignificant activity as addressed by Section 201.210 or 201.211 of this Part. Section 201.212 of this Part must still be followed, as applicable. Other than excusing the owner or operator of a CAAPP source from the requirement to obtain an air pollution control construction permit for the emission units or activities, nothing in this subsection shall alter or affect the liability of the CAAPP source for compliance with emission standards and other requirements that apply to the emission units or activities, either individually or in conjunction with other emission units or activities constructed, modified or located at the source;~~.~~

lll) Plastic injection molding equipment with an annual through-put not exceeding 5,000 tons of plastic resin in the aggregate from all plastic injection molding equipment at the source, and all associated plastic resin loading, unloading, conveying, mixing, storage, grinding, and drying equipment and associated mold release and mold cleaning agents.

(Source: Amended at 32 Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 211
DEFINITIONS AND GENERAL PROVISIONS

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Section

SUBPART B: DEFINITIONS

Section

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AUTHORITY: Implementing Sections 9, 9.1, 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9, 9.1, 9.9, 10, 27 and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 201: Definitions, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13590; amended in R82-1 (Docket A) at 10 Ill. Reg. 12624, effective July 7, 1986; amended in R85-21(A) at 11 Ill. Reg. 11747, effective June 29, 1987; amended in R86-34 at 11 Ill. Reg. 12267, effective July 10, 1987; amended in R86-39 at 11 Ill. Reg. 20804, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 787, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7284, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7621, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10862, effective June 27, 1989; amended in R89-8 at 13 Ill. Reg. 17457, effective January 1, 1990; amended in R89-16(A) at 14 Ill. Reg. 9141, effective May 23, 1990; amended in R88-30(B) at 15 Ill. Reg. 5223, effective March 28, 1991; amended in R88-14 at 15 Ill. Reg. 7901, effective May 14, 1991; amended in R91-10 at 15 Ill. Reg. 15564, effective October 11, 1991; amended in R91-6 at 15 Ill. Reg. 15673, effective October 14, 1991; amended in R91-22 at 16 Ill. Reg. 7656, effective May 1, 1992; amended in R91-24 at 16 Ill. Reg. 13526, effective August 24, 1992; amended in R93-9 at 17 Ill. Reg. 16504, effective September 27, 1993; amended in R93-11 at 17 Ill. Reg. 21471, effective December 7, 1993; amended in R93-14 at 18 Ill. Reg. 1253, effective January 18, 1994; amended in R94-12 at 18 Ill. Reg. 14962, effective September

21, 1994; amended in R94-14 at 18 Ill. Reg. 15744, effective October 17, 1994; amended in R94-15 at 18 Ill. Reg. 16379, effective October 25, 1994; amended in R94-16 at 18 Ill. Reg. 16929, effective November 15, 1994; amended in R94-21, R94-31 and R94-32 at 19 Ill. Reg. 6823, effective May 9, 1995; amended in R94-33 at 19 Ill. Reg. 7344, effective May 22, 1995; amended in R95-2 at 19 Ill. Reg. 11066, effective July 12, 1995; amended in R95-16 at 19 Ill. Reg. 15176, effective October 19, 1995; amended in R96-5 at 20 Ill. Reg. 7590, effective May 22, 1996; amended in R96-16 at 21 Ill. Reg. 2641, effective February 7, 1997; amended in R97-17 at 21 Ill. Reg. 6489, effective May 16, 1997; amended in R97-24 at 21 Ill. Reg. 7695, effective June 9, 1997; amended in R96-17 at 21 Ill. Reg. 7856, effective June 17, 1997; amended in R97-31 at 22 Ill. Reg. 3497, effective February 2, 1998; amended in R98-17 at 22 Ill. Reg.11405, effective June 22, 1998; amended in R01-9 at 25 Ill. Reg. 108, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4582, effective March 15, 2001; amended in R01-17 at 25 Ill. Reg. 5900, effective April 17, 2001; amended in R05-16 at 29 Ill. Reg. 8181, effective May 23, 2005; amended in R05-11 at 29 Ill. Reg.8892, effective June 13, 2005; amended in R04-12/20 at 30 Ill. Reg. 9654, effective May 15, 2006; amended in R07-18 at 31 Ill. Reg. 14254, effective September 25, 2007; amended in R08-06 at 31 Ill. Reg. 1387, effective January 16, 2008 amended in R07-19 at 33 Ill. Reg. _____, effective _____..

SUBPART B: DEFINITIONS

Section 211.1920 Emergency or Standby Unit

"Emergency or Standby Unit" means, for a stationary gas turbine or a stationary reciprocating internal combustion engine, a unit that:

a) Supplies power for the source at which it is located but operates only when the normal supply of power has been rendered unavailable by circumstances beyond the control of the owner or operator of the source and only as necessary to assure the availability of the engine or turbine.–An emergency or standby unit may not be operated to supplement a primary power source when the load capacity or rating of the primary power source has been reached or exceeded.

b) Operates exclusively for firefighting or flood control or both.

c) Operates in response to and during the existence of any officially declared disaster or state of emergency.

d) Operates for the purpose of testing, repair or routine maintenance to verify its readiness for emergency or standby use.

e) Notwithstanding any other subsection in this Section, emergency or standby units may operate an additional 50 hours per year in non-emergency situations.

The term does not include equipment used for purposes other than emergencies, as described above, such as to supply power during high electric demand days.

(Source: Amended at 33 Ill. Reg., _____effective_____)

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SUBTITLE B: AIR POLLUTION
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SUBPART X: VOLUNTARY NO_X EMISSIONS REDUCTION PROGRAM

Section

AUTHORITY: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28].

SOURCE Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14271, effective September 25, 2007; amended in R07-19 at 33. Ill. Reg. _____, effective _____.

SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES AND TURBINES

Section 217.386 Applicability

a) The provisions of this Subpart shall apply to all:

1) ~~A stationary~~ Stationary reciprocating internal combustion engines ~~engine~~ listed in Appendix G of this Part ~~is subject to the requirements of this Subpart Q~~.

2) Stationary reciprocating internal combustion engines and turbines located at a source that emits or has the potential to emit NO_x in an amount equal to or greater than 100 tons per year and is in either the area composed of the Chicago area counties of Cook, DuPage, Kane, Lake, McHenry, and Will, the Townships of Aux Sable and Goose Lake in Grundy County, and the Township of Oswego in Kendall County, or in the area composed of the Metro-East counties of Jersey, Madison, Monroe, and St. Clair, and the Township of Baldwin in Randolph County, where:

A) The engine at nameplate capacity is rated at equal to or greater than 500 bhp output; or

B) The turbine is rated at equal to or greater than 3.5 MW (4,694 bhp) output at 14.7 psia, 59°F and 60 percent relative humidity.

b) Notwithstanding subsection (a)(2) of this Section, an affected unit is not subject to the requirements of this Subpart Q if the engine or turbine is or has been:

1) Used as an emergency or standby unit as defined by 35 Ill. Adm. Code 211.1920;

2) Used for research or for the purposes of performance verification or testing;

3) Used to control emissions from landfills, where at least 50 percent of the heat input is gas collected from a landfill;

4) Used for agricultural purposes, including the raising of crops or livestock that are produced on site, but not for associated businesses like packing operations, sale of equipment or repair; or

5) An engine with nameplate capacity rated at less than 1,500 bhp (1,118kW) output, mounted on a chassis or skids, designed to be moveable, and moved to a different source at least once every 12 months.

c) If an exempt unit ceases to fulfill the criteria specified in subsection (b) of this Section, the owner or operator must notify the Agency in writing within 30 days after becoming aware that the exemption no longer applies and comply with the control requirements of this Subpart Q.

d) The requirements of this Subpart Q will continue to apply to any engine or turbine that has ever been subject to the ~~control~~ requirements of Section 217.388, even if the affected unit or source ceases to fulfill the rating requirements of subsection (a) of this Section or becomes eligible for an exemption pursuant to subsection (b) of this Section.

e) Where a construction permit, for which the application was submitted to the Agency prior to the adoption of this Subpart, is issued that relies on decreases in emissions of NO_x from existing emission units for purposes of netting or emissions offsets, such NO_x decreases shall remain creditable notwithstanding any requirements that may apply to the existing emissions units pursuant to this Subpart.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 217.388 Control and Maintenance Requirements

On and after the applicable compliance date in Section 217.392, an owner or operator of an affected unit must inspect and maintain affected units as required by subsection (~~c~~d) of this Section and comply with one of the following:~~either~~ the applicable emissions concentration as set forth in subsection (a) of this Section, ~~or~~ the requirements for an emissions averaging plan as specified in subsection (b) of this Section, or the requirements for operation as a low usage unit as specified in subsection (c) of this Section.

a) ~~The owner or operator must limit~~ Limits the discharge from an affected unit into the atmosphere of any gases that contain NO_X to no more than:

1) 150 ppmv (corrected to 15 percent O_2 on a dry basis) for spark-ignited rich-burn engines;

2) 210 ppmv (corrected to 15 percent O_2 on a dry basis) for spark-ignited lean-burn engines, except for existing spark-ignited Worthington engines

that are not listed in Appendix G;

3) 365 ppmv (corrected to 15 percent O_2 on a dry basis) for existing spark-ignited Worthington engines that are not listed in Appendix G;

4) 660 ppmv (corrected to 15 percent O_2 on a dry basis) for diesel engines;

5) 42 ppmv (corrected to 15 percent O_2 on a dry basis) for gaseous fuel-fired turbines; and

6) 96 ppmv (corrected to 15 percent O_2 on a dry basis) for liquid fuel-fired turbines.

b) ~~The owner or operator must comply~~ Complies with an emissions averaging plan as provided for in either subsection (b)(1) or (b)(2) of this Section:

1) For any affected unit identified by Section 217.386: The ~~the~~ requirements of the applicable emissions averaging plan as set forth in Section 217.390; or

2) For units identified in Section 217.386(a)(2): The requirements of an emissions averaging plan adopted pursuant to any other Subpart of this Part. For such affected engines and turbines the applicable requirements of this Subpart apply, including, but not limited to, calculation of NO_x allowable and actual emissions rates, compliance dates, monitoring, testing, reporting, and recordkeeping.

c) For units not listed in Appendix G, ~~The owner or operator~~ operates the affected unit as a low usage unit pursuant to subsection (c)(1) or (c)(2) of this Section. Low usage units that are not part of an emissions averaging plan are not subject to the requirements of this Subpart Q except for the requirements to inspect and maintain the unit pursuant to subsection (d) of this Section, test as required by Section 217.394(f), and retain records pursuant to Section 217.396(b) and (d). Either the limitation in subsection (c)(1) or (c)(2) may be utilized at a source, but not both:

1) The potential to emit (PTE) is no more than 100 TPY NO_x aggregated from all engines and turbines located at the source that are not otherwise exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section, and the NO_x PTE limit is contained in a federally enforceable permit; or

2) The aggregate bhp-hrs/MW-hrs from all affected units located at the source that are not exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section, are less than or equal to the bhp-hrs and MW-hrs operation limit listed in

subsections (c)(2)(A) and (c)(2)(B) of this Section. The operation limits of subsections (c)(2)(A) and (c)(2)(B) of this Section must be contained in a federally enforceable permit, except for ~~For~~ units that drive a natural gas compressor ~~station but that are not~~ located at a natural gas compressor station or storage facility.~~, the operation limits of subsections (c)(2)(A) and (c)(2)(B) of this Section must be contained in a federally enforceable permit.~~ The operation limits are:

A) 8 mm bhp-hrs or less on an annual basis for engines; and

B) 20,000 MW-hrs or less on an annual basis for turbines.

d) ~~The owner or operator must inspect~~ Inspects and performs periodic maintenance on the affected unit, in accordance with a Maintenance Plan that documents:

1) For a unit not located at natural gas transmission compressor station or storage facility, either:

A) The manufacturer's recommended inspection and maintenance of the applicable air pollution control equipment, monitoring device, and affected unit; or

B) If the original equipment manual is not available or substantial modifications have been made that require an alternative procedure for the applicable air pollution control device, monitoring device, or affected unit, the owner or operator must establish a plan for inspection and maintenance in accordance with what is customary for the type of air pollution control equipment, monitoring device, and affected unit.

2) For a unit located at a natural gas compressor station or storage facility, the operator's maintenance procedures for the applicable air pollution control device, monitoring device, and affected unit.

e) Owners and operators of affected units may change the method of compliance with this Subpart, as follows:

1) When changing the method of compliance from subsection (c) of this Section to subsection (a) or (b) of this Section, the owner or operator must conduct testing and monitoring according to the requirements of subsections (a) through (e) of Section 217.394, as applicable. For this purpose, references to the "applicable compliance date" in Section 217.394(a)(2) and (a)(3) shall mean the date by which compliance with Section 217.388(a) or (b) is to begin.

2) An owner or operator of an affected unit that is changing the method of

compliance from subsection (a) or (b) of this Section to subsection (c) of this Section must:

A) Continue to operate the affected unit's control device, if that unit relied upon a NO_x emissions control device for compliance with the requirements of subsection (a) or (b) of this Section; and

B) Prior to changing the method of compliance to subsection (c) of this Section, complete any outstanding initial performance testing, subsequent performances testing or monitoring as required by Section 217.394(a), (b), (c), (d) or (e) for the affected unit. If the deadline for such testing or monitoring has not yet occurred (e.g., the five-year testing or monitoring sequence has not yet elapsed) the owner or operator must complete the test or monitoring prior to changing the method of compliance to subsection (c) of this Section. After changing the method of compliance to subsection (c) of this Section, no additional testing or monitoring will be required for the affected unit while it is complying with subsection (c) of this Section, except as provided for in Section 217.394(f).

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 217.390 Emissions Averaging Plans

a) An owner or operator of certain affected units may comply through an emissions averaging plan.

1) A~~The~~ unit or units that commenced operation before January 1, 2002~~,~~ may be included in only one~~an~~ emissions averaging plan, as follows:

A) ~~units~~Units:

i) ~~Listed in Appendix G and~~ Located at a single source or at multiple sources in Illinois~~,~~ to address compliance for units identified in Section 217.386(a)(1), so long as the units are owned by the same company or parent company where the parent company has working control through stock ownership of its subsidiary corporations. ~~A unit may be listed in only one emissions averaging plan~~; or

ii) ~~Identified in Section 217.386(a)(2), and~~ Located at a single source or at multiple sources in either the Chicago area counties or Metro-East area counties~~,~~ to address compliance for units identified in Section 217.386(a)(1), so long as the units are owned by the same company or parent company where the parent company has working control

through stock ownership of its subsidiary corporations.

B) Units that have a compliance date later than the control period for which the averaging plan is being used for compliance; ~~and~~

C) Units ~~which~~ that are not otherwise subject to this Subpart (so long as the units are owned by the same company or parent company where the parent company has working control through stock ownership of its subsidiary corporations) or that the owner or operator may claim as exempt pursuant to Section 217.386(b) but does not claim as exempt. For as long as such unit is included in an emissions averaging plan, it will be treated as an affected unit and subject to the applicable emission concentration, limits, testing, monitoring, recordkeeping and reporting requirements; and.

D) Units which comply with the requirements for low usage units set forth in Section 217.388(c), so long as the unit or units operates NO_x emissions control technology. For as long as such unit is included in an emissions averaging plan, it will be subject to the applicable emission concentration limits in subsection (g)(7) of this Section, the applicable testing and monitoring requirements for affected units in subsections (a) through (e) of Section 217.394, and the applicable recordkeeping and reporting requirements for affected and low usage units in subsections (a) through (d) of Section 217.396.

2) The following types of units may not be included in an emissions averaging plan:

A) Units that commence operation after January 1, 2002, unless the unit or units replace~~s~~ a unit or units described in subsection (a)(1) of this Section ~~an engine or turbine~~ that commenced operation on or before January 1, 2002, or the unit or units ~~it~~ replace~~s~~ a unit or units described in subsection (a)(1) of this Section ~~an engine or turbine~~ that replaced a unit or units described in subsection (a)(1) of this Section that commenced operation on or before January 1, 2002. The new unit must be used for the same purpose and have substantially equivalent or less process capacity or be permitted for less NO_x emissions on annual basis than the actual NO_x emissions as the ~~replacement~~ unit or units that are replaced. The owner or operator of a unit that is ~~shutdown~~ shut down and replaced must comply with the provisions of Section 217.396(c)(3) before the replacement unit may be included in an emissions averaging plan.

B) Units which the owner or operator is claiming are exempt pursuant

to Section 217.386(b) ~~or as low usage units pursuant to Section 217.388(c).~~

b) An owner or operator must submit an emissions averaging plan to the Agency by the applicable compliance date set forth in Section 217.392, or by May 1 of the year in which the owner or operator is using a new emissions averaging plan to comply.

1) The plan must include, but is not limited to:

~~1~~A) The list of affected units included in the plan by unit identification number and permit number.

~~2~~B) A sample calculation demonstrating compliance using the methodology provided in subsection (f) of this Section for both the ozone season and calendar year.

2) The plan will be effective as follows:

A) An initial plan for units required to comply by January 1, 2008, is effective January 1, 2008;

B) An initial plan for units required to comply by May 1, 2010, is effective May 1, 2010, for those units;

C) A new plan submitted pursuant to subsection (b) of this Section but not submitted by January 1, 2008, or May 1, 2010, is effective retroactively to January 1 of the applicable year;

D) An amended plan submitted pursuant to subsection (c) of this Section is effective retroactively to January 1 of the applicable year; or

E) An amended plan submitted pursuant to subsection (d) of this Section is effective on the date it is received by the Agency.

c) An owner or operator may amend an emissions averaging plan only once per calendar year. An amended plan must include the information from subsection (b)(1) and may change, but is not limited to changing the group of affected units or reflecting changes in the operation of the affected units. An amended plan must be submitted to the Agency by May 1 of the applicable calendar year and is effective as set forth in subsection (b)(2) of this Section. If an amended plan is not received by the Agency by May 1 of the applicable calendar year, the previous year's plan will be the applicable emissions averaging plan.

d) Notwithstanding subsection (c) of this Section, an owner or operator, and the

buyer or seller, if applicable:~~, must~~

1) Must submit an updated emissions averaging plan or plans to the Agency within 60 days~~,~~ if a unit that is listed in an emissions averaging plan is sold or taken out of service.

2) May amend its emissions averaging plan to include another unit within 30 days ~~of~~ after discovering that the unit no longer qualifies as an exempt unit pursuant to Section 217.386(b) or as a low usage unit pursuant to Section 217.388(c).

3) May submit an updated emissions averaging plan or plans to the Agency within 60 days of purchasing a new unit to include the new unit.

e) An owner or operator must:

1) Demonstrate compliance for both the ozone season (May 1 through September 30) and the calendar year (January 1 through December 31) by using the methodology and the units listed in the most recent emissions averaging plan submitted to the Agency pursuant to subsection (b), (c), or (d) of this Section; the higher of the monitoring or test data determined pursuant to Section 217.394; and the actual hours of operation for the applicable control period;

2) Notify the Agency by October 31 following the ozone season, if compliance cannot be demonstrated for that ozone season; and

3) Submit to the Agency by January 31 following each calendar year, a compliance report containing the information required by Section 217.396(c)(4).

f) The total mass of actual NO_X emissions from the units listed in the emissions averaging plan must be equal to or less than the total mass of allowable NO_X emissions for those units for both the ozone season and calendar year. The following equation must be used to determine compliance:

$N_{act} \leq N_{all}$

Where:

$N_{act} = \sum_{i=1}^{n} EM_{act(i)}$

$N_{all} = \sum_{i=1}^{n} EM_{all(i)}$

N_{act} = Total sum of the actual NO_X mass emissions from units included in the averaging plan for each fuel used (lbs per ozone season and calendar year).

N_{all} = Total sum of the allowable NO_X mass emissions from units included in the averaging plan for each fuel used (lbs per ozone season and calendar year).

$EM_{all(i)}$ = Total mass of allowable NO_X emissions in lbs for a unit as determined in subsection (g)(2) or (h)(2) of this Section.

$EM_{act(i)}$= Total mass of actual NO_x emissions in lbs for a unit as determined in subsection (g)(1) or (h)(1) of this Section.

i = Subscript denoting an individual unit and fuel used.

n = Number of different units in the averaging plan.

g) For each unit in the averaging plan, and each fuel used by a unit, determine actual and allowable NO_X emissions using the following equations, except as provided for in subsection (h) of this Section:

1) Actual emissions must be determined as follows:

$$EM_{act(i)} = E_{act(i)} \times H_i$$

$$E_{act(i)} = \frac{\sum_{j=1}^{m} C_{d(act(j))} x F_d x \left(\frac{20.9}{20.9 - \%O_{2d(j)}} \right)}{m}$$

2) Allowable emissions must be determined as follows:

$$EM_{all(i)} = E_{all(i)} \times H_i$$

$$E_{all(i)} = \frac{\sum_{j=1}^{m} C_{d(all)} x F_d x \left(\frac{20.9}{20.9 - \%O_{2d(j)}} \right)}{m}$$

Where:

$EM_{act(i)}$= Total mass of actual NO_X emissions in lbs for a unit, except as provided for in subsections (g)(3) and (g)(5) of this Section.

$EM_{all(i)}$ = Total mass of allowable NO_X emissions in lbs for a unit, except as provided for in subsection (g)(3) of this Section.

E_{act} = Actual NO_X emission rate (lbs/mmBtu) calculated according to the above equation.

E_{all} = Allowable NO_X emission rate (lbs/mmBtu) calculated according to the above equation, as applicable.

H = Heat input (mmBtu/ozone season or mmBtu/year) calculated from fuel flow meter and the heating value of the fuel used.

$C_{d(act)}$ = Actual concentration of NO_X in lb/dscf (ppmv x

1.194 x 10^{-7}) on a dry basis for the fuel used. Actual concentration is determined on each of the most recent test runs or monitoring passes performed pursuant to Section 217.394, whichever is higher.

$C_{d(all)}$ = Allowable concentration of NO_X in lb/dscf (allowable emission limit in ppmv specified in Section 217.388(a), except as provided for in subsection (g)(4), (g)(5), ~~or~~ (g)(6, or (g)(7) of this Section, if applicable~~.~~, (multiplied by 1.194 x 10^{-7}) on a dry basis for the fuel used.

F_d = The ratio of the gas volume of the products of combustion to the heat content of the fuel (dscf/mmBtu) as given in the table of F Factors included in 40 CFR 60, ~~A~~appendix A, Method 19 or as determined using 40 CFR 60, ~~A~~appendix A, Method 19.

$\%O_{2d}$ = Concentration of oxygen in effluent gas stream measured on a dry basis during each of the applicable tests or monitoring runs used for determining emissions, as represented by a whole number percent, e.g., for 18.7%O_{2d}, 18.7 would be used.

i = Subscript denoting an individual unit and the fuel used.

j = Subscript denoting each test run or monitoring pass for an affected unit for a given fuel.

m = The number of test runs or monitoring passes for an affected unit using a given fuel.

3) For a replacement unit that is electric-powered, the allowable NO_X emissions from the affected unit that was replaced should be used in the averaging calculations and the actual NO_X emissions for the electric-powered replacement unit ($EM_{(i)act\ elec(i)}$) are zero. Allowable NO_X emissions for the electric-powered replacement are calculated using the actual total bhp-hrs generated by the electric-powered replacement unit on an ozone season and on an annual basis multiplied by the allowable NO_X emission rate in lb/bhp-hr of the replaced unit. The allowable mass of NO_X emissions from an electric-powered replacement unit ($EM_{(i)all\ elec(i)}$) must be determined by multiplying the nameplate capacity of the unit by the hours operated during the ozone season or annually and the allowable NO_X emission rate of the replaced unit ($E_{all\ rep}$) in lb/mmBtu converted to lb/bhp-hr. For this calculation the following equation should be used:

$$EM_{all\ elec(i)} = bhp \times OP \times F \times E_{all\ rep(i)}$$

Where:

$EM_{all\ elec(i)}$ = Mass of allowable NO_X emissions from the electric-powered replacement unit in pounds per ozone season or calendar year.

bhp = Nameplate capacity of the electric-powered replacement unit in brake- horsepower.

OP = Operating hours during the ozone season or calendar year.

F = Conversion factor of 0.0077 mmBtu/bhp-hr.

$E_{all\ rep(i)}$ = Allowable NO_X emission rate (lbs/mmBtu) of the replaced unit.

i = Subscript denoting an individual electric unit and the fuel used.

4) For a replacement unit that is not electric, the allowable NO_x emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be the higher of the actual NO_x emissions as determined by testing or monitoring data or the applicable uncontrolled NO_x emissions factor from Compilation of Air ~~p~~Pollutant ~~e~~Emission Factors: AP-42, Volume I: Stationary Point and Area Sources, as incorporated by reference in Section 217.104 for the unit that was replaced.

5) For a unit that is replaced with purchased power, the allowable NO_x emissions rate used in the ~~above~~ equations set forth in subsection (g)(2) of this Section must be the emissions concentration ~~as~~ set forth in Section 217.388(a) or subsection (g)(6) of this Section, when applicable, for the type of unit that was replaced. For owners or operators replacing units with purchased power, the annual hours of operations that must be used are the calendar year hours of operation for the unit that was s~~hutdown~~ shut down, averaged over the three-year period prior to the shutdown. The actual NO_X emissions for the units replaced by purchased power ($EM_{(i)act}$) are zero. These units may be included in any emissions averaging plan for no more than five years beginning with the calendar year that the replaced unit is shut down.

6) For units that have a later compliance date~~non-Appendix G units used in an emissions averaging plan~~, allowable emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be:

A) Prior to the applicable compliance date pursuant to Section 217.392, the higher of the actual NO_x emissions as determined by testing or monitoring data~~,~~ or the applicable uncontrolled NO_x emissions factor from Compilation of Air Pollutant Emission Factors: AP-42, Volume I: Stationary Point and Areas Sources, as incorporated by reference in Section 217.104~~)~~; or

B) On and after the unit's applicable compliance date pursuant to Section 217.392, the applicable emissions concentration for that type of unit pursuant to Section 217.388(a).

7) For a low usage unit complying with the requirements of Section 217.388(c) and used in an emissions averaging plan, the allowable NO_x emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be the higher of the actual NO_x emissions as determined by testing or monitoring data or the applicable uncontrolled NO_x emissions factor from Compilation of Air Pollutant Emission Factors: AP-42, Volume I: Stationary Point and Area Sources, as incorporated by reference in Section 217.104.

h) For units that use CEMS, the data must show that the total mass of actual NO_X emissions determined pursuant to subsection (h)(1) of this Section is less than or equal to the allowable NO_X emissions calculated in accordance with the equations in subsections (f) and (h)(2) of this Section for both the ozone season and calendar year. The equations in subsection (g) of this Section will not apply.

1) The total mass of actual NO_X emissions in lbs for a unit (EM_{act}) must be the sum of the total mass of actual NO_X emissions from each affected unit using CEMS data collected in accordance with 40 CFR 60 or 75, or alternate methodology that has been approved by the Agency or USEPA and included in a federally enforceable permit.

2) The allowable NO_x emissions must be determined as follows:

$$EM_{all_{(i)}} = \sum_{i=1}^{m} (Cd_i * flow_i * 1.194x10^{-7})$$

Where:

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in lbs for a unit.
f~~F~~low$_i$ = Stack flow (dscf/hr) for a given stack.
Cd_i = Allowable concentration of NO_x (ppmv) specified in Section 217.388(a) ~~of this subpart~~ for a given stack. (1.194 x 10^{-7}~~)~~ converts to lb/dscf).
j = subscript denoting each hour operation of a given unit.
m = Total number of hours of operation of a unit.
i = Subscript denoting an individual unit and the fuel used.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

(Source: Amended at 32 Ill. Reg. _____, effective _____)

Section 217.392 Compliance

a) On and after January 1, 2008, an owner or operator of an affected engine listed in

Appendix G may not operate the affected engine unless the requirements of this Subpart Q are met ~~or the affected engine is exempt pursuant to Section 217.386(b).~~

b) On and after May 1, 2010, an owner or operator of a unit identified by Section 217.386(a)(2), and that is not listed in Appendix G, may not operate the affected unit unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b).

c) Owners and operators of an affected unit may use NO_x allowances to meet the compliance requirements in Section 217.388 as specified ~~below~~ in this subsection (c). A NO_x allowance is defined as an allowance used to meet the requirements of a NO_x trading program in which the State of Illinois participates, ~~administered by USEPA~~ where one allowance is equal to one ton of NO_x emissions.

1) NO_x allowances may be used only under the following circumstances:

A) An anomalous or unforeseen operating scenario inconsistent with historical operations for a particular ozone season or calendar year that causes an exceedance of an emissions or operating hour limitation;

B) To achieve compliance for no more than two events in any rolling five-year period; ~~and~~

C) If the anomalous or unforeseen operating scenario occurs during an ozone season, it counts as a single event for purposes of the calendar year even if there is an exceedance of both an ozone season emission limitation and an annual emissions limitations as a result of such operating scenario; and

~~C~~D) For a unit that is not listed in Appendix G.

2) The owner or operator of the affected unit must surrender to the Agency a NO_x allowance for each ton or portion of a ton of NO_x by which actual emissions exceed allowed emissions, as follows:

A) Where a low usage limitation under Section 217.388(c)(2) has been exceeded, the owner or operator of the affected unit must calculate the NO_x emissions resulting from the number of hours that exceeded the operating hour low usage limit and surrender to the Agency one NO_x allowance for each ton or portion of a ton of NO_x that was calculated.

B) For noncompliance of a limitation in an emissions averaging plan which includes low usage units, the owner or operator of the

affected low usage unit must calculate the NO_x emissions using the applicable allowable emissions concentration from Section 217.388(a).

C) For noncompliance with a seasonal limit in Section 217.388(b), only a NO_x ozone season allowance must be used.

D) For noncompliance with the emissions concentration limits in Section 217.388(a), low usage limitations in Section 217.388(c) or an annual limitation in an emissions averaging plan in Section 217.388(b), only a NO_x annual allowance may be used.

E) Notwithstanding the provisions of subsections (c)(2)(C) and (c)(2)(D) of this Section, if a NO_x annual trading program does not exist, a NO_x ozone season allowance may be used for noncompliance with the emissions concentration limits in Section 217.388(a), low usage limitations in Section 217.388(c) or an annual limitation in an emissions averaging plan in Section 217.388(b).

3) The owner or operator must submit a report documenting the circumstances that required the use of NO_x allowances and identify what actions will be taken in subsequent years to address these circumstances and must transfer the NO_x allowances to the Agency's federal NO_x retirement account. The report and the transfer of allowances must be submitted by October 31 for exceedances during the ozone season and March 1 for exceedances of the emissions concentration limits, the annual emissions averaging plan limits, or low usage limitations. The report must contain the NATS serial numbers of the NO_x allowances.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 217.394 Testing and Monitoring

a) An owner or operator must conduct an initial performance test pursuant to subsection (c)(1) or (c)(2) of this Section as follows:

1) By January 1, 2008, for affected engines listed in Appendix G. Performance tests must be conducted on units listed in Appendix G, even if the unit is included in an emissions averaging plan pursuant to Section 217.388(b).

2) By the applicable compliance date as set forth in Section 217.392, or within~~Within~~ the first 876 hours of operation per calendar year, whichever is later:

A) ~~Performance tests must be conducted on~~ For affected units not listed in Appendix G that operate more than 876 hours per calendar year; and

B) For units that are not affected units that are included in an emissions averaging plan and operate more than 876 hours per calendar year.

3) Once within the five-year period after the applicable compliance date as set forth in Section 217.392:

A) For affected units that operate fewer than 876 hours per calendar year; and~~. Performance tests must be conducted on~~

B) For units that are not affected units that are included in an emissions averaging plan and that operate fewer than 876 hours per calendar year.

b) An owner or operator of an engine or turbine must conduct subsequent performance tests pursuant to subsection (~~c~~b)(1), ~~or~~ (~~c~~b)(2), and (b)(3) of this Section as follows:

1) For affected engines listed in Appendix G and all units included in an emissions averaging plan, once every five years. Testing must be performed in the calendar year by May 1 or within 60 days after starting operation, whichever is later;

2) If the monitored data shows that the unit is not in compliance with the applicable emissions concentration or emissions averaging plan, the owner or operator must report the deviation to the Agency in writing within 30 days and conduct a performance test pursuant to subsection (c) of this Section within 90 days of the determination of noncompliance; and

3) When, in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.388, the owner or operator of a unit must, at his or her own expense, conduct the test in accordance with the applicable test methods and procedures specified in this Section within 90 days after receipt of a notice to test from the Agency or USEPA.

c) Testing Procedures:

1) For an engine: The owner or operator must conduct a performance test using Method 7 or 7E of 40 CFR 60, appendix A, as incorporated by reference in Section 217.104. Each compliance test must consist of three separate runs, each lasting a minimum of 60 minutes. NO_x emissions must

be measured while the affected unit is operating at peak load. If the unit combusts more than one type of fuel (gaseous or liquid), including backup fuels, a separate performance test is required for each fuel.

2) For a turbine ~~included in an emissions averaging plan~~: The owner or operator must conduct a performance test using the applicable procedures and methods in 40 CFR 60.4400, as incorporated by reference in Section 217.104.

d) Monitoring: Except for those years in which a performance test is conducted pursuant to subsection (a) or (b) of this Section, the owner or operator of an affected unit or a unit included in an emissions averaging plan must monitor NO_x concentrations annually, once between January 1 and May 1 or within the first 876 hours of operation per calendar year, whichever is later. If annual operation is less than 876 hours per calendar year, each affected unit must be monitored at least once every five years. Monitoring must be performed as follows:

1) A portable NO_x monitor ~~and~~ utilizing method ASTM D6522-00, as incorporated by reference in Section 217.104, or a method approved by the Agency must be used. If the engine or turbine combusts both liquid and gaseous fuels as primary or backup fuels, separate monitoring is required for each fuel.

2) NO_x and O_2 concentrations measurements must be taken three times for a duration of at least 20 minutes. Monitoring must be done at highest achievable load. The concentrations from the three monitoring runs must be averaged to determine whether the affected unit is in compliance with the applicable emissions concentration or emissions averaging plan, as specified in Section 217.388.

e) Instead of complying with the requirements of subsections (a), (b), (c) and (d) of this Section, an owner or operator may install and operate a CEMS on an affected unit that meets the applicable requirements of 40 CFR 60, subpart A, and appendix B or 40 CFR 75, incorporated by reference in Section 217.104, and complies with the quality assurance procedures specified in 40 CFR 60, appendix F, or 40 CFR 75, as incorporated by reference in Section 217.104, or an alternate procedure as approved by the Agency or USEPA in a federally enforceable permit. The CEMS must be used to demonstrate compliance with the applicable emissions concentration or emissions averaging plan only on an ozone season and annual basis.

f) The testing and monitoring requirements of this Section do not apply to affected units in compliance with the requirements of the low usage limitations pursuant to Section 217.388(c) or low usage units using NO_x allowances to comply with the requirements of this Subpart pursuant to Section 217.392(c), unless such units are included in an emissions averaging plan. Notwithstanding ~~these~~ the above

circumstances, when, in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.388, the owner or operator of a unit must, at his or her own expense, conduct the test in accordance with the applicable test methods and procedures specified in this Section within 90 days after receipt of a notice to test from the Agency or USEPA.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 217.396 Recordkeeping and Reporting

a) Recordkeeping. The owner or operator of any unit included in an emissions averaging plan (e.g., affected units, nonsubject units, units that could be exempt pursuant to Section 217.386(b), and low usage units) or an affected unit that is not exempt pursuant to Section 217.386(b) and is not subject to the low usage exemption of Section 217.388(c) ~~of an Appendix G unit or a unit included in an emissions averaging plan~~ must maintain records that demonstrate compliance with the requirements of this Subpart Q, which include, but are not limited to:

1) Identification, type (e.g., lean-burn, gas-fired), and location of each unit.

2) Calendar date of the record.

3) The number of hours the unit operated on a monthly basis~~,~~ and during each ozone season.

4) Type and quantity of the fuel used on a daily basis.

5) The results of all monitoring performed on the unit and reported deviations.

6) The results of all tests performed on the unit.

7) The plan for performing inspection and maintenance of the units, air pollution control equipment, and the applicable monitoring device pursuant to Section 217.388(d)~~(e)~~.

8) A log of inspections and maintenance performed on the unit's air emissions, monitoring device, and air pollution control device. These records must include, at a minimum, date, load levels and any manual adjustments, along with the reason for the adjustment (e.g., air to fuel ratio, timing or other settings).

9) If complying with the emissions averaging plan provisions of Sections 217.388(b) and 217.390, copies of the calculations used to demonstrate compliance with the ozone season and annual control period limits, noncompliance reports for the ozone season, and ozone and annual control

period compliance reports submitted to the Agency.

10) Identification of time periods for which operating conditions and pollutant data were not obtained by either the CEMS or alternate monitoring procedures, including the reasons for not obtaining sufficient data and a description of corrective actions taken.

11) Any NO_x allowance reconciliation reports submitted pursuant to Section 217.392(c)(3).

b) The owner or operator of an affected unit or unit included in an emissions averaging plan must maintain the records required by subsections ~~subsection~~ (a) or (d) of this Section, as applicable, for a period of five years at the source at which the unit is located. The records must be made available to the Agency and USEPA upon request.

c) Reporting Requirements

1) The owner or operator must notify the Agency in writing 30 days and five days prior to testing, pursuant to Section 217.394(a) and (b) and:

A) If, after the 30-days notice for an initially scheduled test is sent, there is a delay (e.g., due to operational problems) in conducting the performance test as scheduled, the owner or operator of the unit must notify the Agency as soon as possible of the delay in the original test date, either by providing at least seven days prior notice of the rescheduled date of the performance test~~,~~ or by arranging a new test date with the Agency by mutual agreement;

B) Provide a testing protocol to the Agency 60 days prior to testing; and

C) Not later than 30 days after the completion of the test, submit the results of the test to the Agency.

2) Pursuant to the requirements for monitoring in Section 217.394(d), the owner or operator of the unit must report to the Agency any monitored exceedances of the applicable NO_x concentration from Section 217.388(a) or (b) within 30 days after performing the monitoring.

3) Within 90 days after permanently shutting down an affected unit or a unit included in an emissions averaging plan, the owner or operator of the unit must withdraw or amend the applicable permit to reflect that the unit is no longer in service.

4) If demonstrating compliance through an emissions averaging plan:

A) By October 31 following the applicable ozone season, the owner or operator must notify the Agency if he or she cannot demonstrate compliance for that ozone season; and

B) By January 31~~30~~ following the applicable calendar year, the owner or operator must submit to the Agency a report that demonstrates the following:

i) For all units that are part of the emissions averaging plan, the total mass of allowable NO_X emissions for the ozone season and for the annual control period;

ii) The total mass of actual NO_X emissions for the ozone season and annual control period for each unit included in the averaging plan;

iii) The calculations that demonstrate that the total mass of actual NO_X emissions are less than the total mass of allowable NO_X emissions using equations in Sections 217.390(f) and (g); and

iv) The information required to determine the total mass of actual NO_X emissions and the calculations performed in subsection (c~~d~~)(4)(B)(iii) of this Section.

5) If operating a CEMS, the owner or operator must submit an excess emissions and monitoring systems performance report in accordance with the requirements of 40 CFR 60.7(c) and 60.13~~,~~ or 40 CFR 75~~,~~ incorporated by reference in Section 217.104, or an alternate procedure approved by the Agency or USEPA and included in a federally enforceable permit.

6) If using NO_x allowances to comply with the requirements of Section 217.388, reconciliation reports as required by Section 217.392(c)(3).

d) The owner or operator of an affected unit that is complying with the low usage provisions of Section 217.388(c) must:

1) For each unit complying with Section 217.388(c)(1), maintain a record of the NO_x emissions for each calendar year;

2) For each unit complying with Section 217.388(c)(2), maintain a record of bhp or MW-hours operated each calendar year; and

3) For each unit utilizing NO_x allowances for compliance pursuant to Section

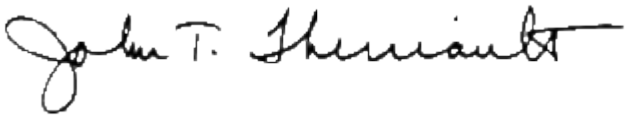
217.392(c)(3), maintain and submit any NO_x allowance reconciliation reports.

e) Instead of complying with the requirements of subsection (a) of this Section; subsection (b) of this Section; subsections (c)(1) through (c)(4) of this Section; and subsection (d) of this Section; an owner or operator of an affected unit complying with the requirements of Section 217.388(a) and operating a CEMS on that unit may meet the applicable testing, monitoring, reporting and recordkeeping requirements for that CEMS of 40 CFR 75, as incorporated by reference in Section 217.104.

(Source: Amended at 33 Ill. Reg. _____, effective _____).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 21, 2009, by a vote of 5-0.



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John T. Therriault, Assistant Clerk
Illinois Pollution Control Board