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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

June 19, 2009

POLLUTION CONTROL BOARD
JOHN THERRIAULT ASSISTANT CLERK
100 W RANDOLPH ST, STE 11-500
CHICAGO, IL 60601

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 33, Issue 26 of the Illinois Register, dated 6/26/2009.

PROPOSED RULES

Nitrogen Oxides Emissions

35 Ill. Adm. Code 217

8880

Point of Contact: Nancy Miller

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code Citation: 35 Ill. Adm. Code 217
- 3) Section Number: 217.751 Proposed Action: New
- 4) Statutory Authority: Implementing Section 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, and 28]
- 5) A Complete Description of the Subjects and Issues Involved:

The Board's May 7, 2009 opinion and order in In the Matter of: Nitrogen Oxide (NOx) Trading Program Sunset Provisions for Electric Generating Units (EGU's): New 35 Ill. Adm. Code 217.751, R09-20 discusses in detail the amendments to Part 217.Subpart W proposed in this rulemaking.

On May 7, 2009, the Illinois Pollution Control Board authorized first notice publication, without comment on the merits, of an Illinois Environmental Protection Agency (IEPA) proposal that would sunset the provisions of the Nitrogen Oxides (NOx) Trading Program rules for electrical generating units (EGUs). IEPA filed this proposal with the Board on April 21, 2009, along with a motion for expedited review requesting immediate first notice publication and the scheduling of hearings as soon as possible.

In its statement of reasons, the IEPA states that Illinois adopted both the NOx rules at 35 Ill. Adm. Code 217 and the Clean Air Interstate Rule (CAIR) at 35 Ill. Adm. Code 225 after adoption of similar rules by the United States Environmental Protection Agency (USEPA). USEPA has approved both sets of rules for inclusion in the State Implementation Plan (SIP) for ozone attainment. As do the USEPA rules, the CAIR provisions, as set forth in 35 Ill. Code 225.Subpart E, include a trading program for control of NOx emissions during the ozone season that replaces the provisions in Part 217.Subpart W for EGUs beginning with the 2009 control period (May 1 through September 30) and thereafter.

But, due to a federal court ruling concerning the federal CAIR rules in *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008), USEPA must take additional action concerning its rules. To solve the problem, in 40 CFR 51.123(bb)(1)(i), USEPA has provided that states such as Illinois with approved CAIR programs may revise their applicable SIP so that the provisions of the NOx, SIP Call Trading Program do not apply to affected EGUs.

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IEPA's proposal requesting the Board to amend the Illinois rules is the first step to revision of the SIP. If the Board adopts a final rule in this rulemaking, IEPA will submit the rule to USEPA for approval and inclusion in the SIP.

EGUs currently must comply with two sets of rules for the 2009 ozone season and beyond: the Illinois Clean Air Interstate Rule (CAIR) requirements at Part 225 and the Illinois NOx Trading Program at Part 217. To address and remove the duplication, this rulemaking proposes to sunset the provisions of the NOx Trading Program, by adding a new Part 217.751 to sunset the rules beginning with the 2009 ozone control season.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking:

The Agency stated that it relied on the following documents in preparing its proposal to the Board:

- a. Illinois Environmental Protection Act (415 ILCS 5 *et. seq.*)
- b. The Clean Air Act, as amended in 1990 (42 U.S.C. §7401 *et seq.*);
- c. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule, 70 *Fed. Reg.* 25162 (May 12, 2005);
- d. Approval and Promulgation of Air Quality Implementation Plans; Illinois; Oxides of Nitrogen Regulations, 66 *Fed. Reg.* 56454 (November 8, 2001)
- e. Approval of Implementation Plans of Illinois; Clean Air Interstate Rule, 72 *Fed. Reg.* 58528 (October 16, 2007);
- f. North Carolina v. USEPA, 531 F.3d 896 (C.A.D.C. Cir. 2008); and
- g. North Carolina v. USEPA, 550 F.3d 1176 (C.A.D.C. Cir. 2008).

7) Will this proposed amendment replace an emergency rule currently in effect? No.

8) Does this rulemaking contain an automatic repeal date? No.

9) Does this proposed amendment contain incorporations by reference? No.

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10) Are there any other proposed rules pending on this Part? Yes

<u>Section Numbers:</u>	<u>Proposed Action:</u>	<u>Illinois Register Citation:</u>
217.386	Amend	32 Ill. Reg. 17075; Oct. 31, 2008
217.388	Amend	32 Ill. Reg. 17075; Oct. 31, 2008
217.390	Amend	32 Ill. Reg. 17075; Oct. 31, 2008
217.392	Amend	32 Ill. Reg. 17075; Oct. 31, 2008
217.394	Amend	32 Ill. Reg. 17075; Oct. 31, 2008
217.396	Amend	32 Ill. Reg. 17075; Oct. 31, 2008
217.100	Amended	33 Ill. Reg. 6921; May 22, 2009
217.104	Amended	33 Ill. Reg. 6921; May 22, 2009
217.121	Repealed	33 Ill. Reg. 6921; May 22, 2009
217.141	Amended	33 Ill. Reg. 6921; May 22, 2009
217.150	New Section	33 Ill. Reg. 6921; May 22, 2009
217.152	New Section	33 Ill. Reg. 6921; May 22, 2009
217.154	New Section	33 Ill. Reg. 6921; May 22, 2009
217.155	New Section	33 Ill. Reg. 6921; May 22, 2009
217.156	New Section	33 Ill. Reg. 6921; May 22, 2009
217.157	New Section	33 Ill. Reg. 6921; May 22, 2009
217.158	New Section	33 Ill. Reg. 6921; May 22, 2009
217.160	New Section	33 Ill. Reg. 6921; May 22, 2009
217.162	New Section	33 Ill. Reg. 6921; May 22, 2009
217.164	New Section	33 Ill. Reg. 6921; May 22, 2009
217.165	New Section	33 Ill. Reg. 6921; May 22, 2009
217.166	New Section	33 Ill. Reg. 6921; May 22, 2009
217.180	New Section	33 Ill. Reg. 6921; May 22, 2009
217.182	New Section	33 Ill. Reg. 6921; May 22, 2009
217.184	New Section	33 Ill. Reg. 6921; May 22, 2009
217.185	New Section	33 Ill. Reg. 6921; May 22, 2009
217.186	New Section	33 Ill. Reg. 6921; May 22, 2009
217.200	New Section	33 Ill. Reg. 6921; May 22, 2009
217.202	New Section	33 Ill. Reg. 6921; May 22, 2009
217.204	New Section	33 Ill. Reg. 6921; May 22, 2009
217.220	New Section	33 Ill. Reg. 6921; May 22, 2009
217.222	New Section	33 Ill. Reg. 6921; May 22, 2009
217.240	New Section	33 Ill. Reg. 6921; May 22, 2009
217.242	New Section	33 Ill. Reg. 6921; May 22, 2009
217.244	New Section	33 Ill. Reg. 6921; May 22, 2009
217.340	New Section	33 Ill. Reg. 6921; May 22, 2009
217.342	New Section	33 Ill. Reg. 6921; May 22, 2009

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217.344	New Section	33 Ill. Reg. 6921; May 22, 2009
217.345	New Section	33 Ill. Reg. 6921; May 22, 2009
217.Appendix H	New Section	33 Ill. Reg. 6921; May 22, 2009

- 11) Statement of Statewide Policy Objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2004)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for 45 days after the date of publication in the *Illinois Register*. Comments should reference Docket R09-20 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

The Board will also accept sworn testimony and oral public comment at the hearings scheduled as followed:

Thursday, June 18, 2008, 1:00 p.m.

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

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

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

Procedural details concerning the order of hearings and requirements concerning pre-filing of testimony are detailed in a May 13, 2009 hearing officer order.

Interested persons may request copies of the Board's opinion and orders and hearing officer orders in Docket R09-20 by calling the Clerk's office at 312-814-3620, or download from the Board's Web site at www.ipcb.state.il.us.

For more information, contact Kathleen Crowley at 312/814-6929 or email at crowlek@ipcb.state.il.us.

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- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Any of the 229 electrical generating units that are subject to the NOx Trading Program and that identify themselves as small businesses, small municipalities, or not-for-profit corporations.
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of Professional skills necessary for compliance: None.
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2006 (30 Ill. Reg. 11906-08). This rulemaking was not included in either of the two most recent regulatory agendas because the need for the rulemaking is the result of recent federal court decisions concerning USEPA rules. This caused uncertainty associated with the CAIR Trading program that was adopted by both USEPA and Illinois to replace the one that is the subject of this proposal. This is explained in item 5), above.
- 15) Does this amendment require the review of the Procurement Policy Board as specified in Section 5-25 of the Illinois Procurement Code? [30 ILCS 500/5-25] No

The full text of the Proposed Amendment begins on the next page:

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

PART 217
NITROGEN OXIDES EMISSIONS

SUBPART A: GENERAL PROVISIONS

Section	
217.100	Scope and Organization
217.101	Measurement Methods
217.102	Abbreviations and Units
217.103	Definitions
217.104	Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section	
217.121	New Emission Sources

SUBPART C: EXISTING FUEL COMBUSTION EMISSION SOURCES

Section	
217.141	Existing Emission Sources in Major Metropolitan Areas

SUBPART K: PROCESS EMISSION SOURCES

Section	
217.301	Industrial Processes

SUBPART O: CHEMICAL MANUFACTURE

Section	
217.381	Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION
ENGINES AND TURBINES

Section	
217.386	Applicability
217.388	Control and Maintenance Requirements

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217.390	Emissions Averaging Plans
217.392	Compliance
217.394	Testing and Monitoring
217.396	Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

Section	
217.400	Applicability
217.402	Control Requirements
217.404	Testing
217.406	Monitoring
217.408	Reporting
217.410	Recordkeeping

SUBPART U: NO_x CONTROL AND TRADING PROGRAM FOR
SPECIFIED NO_x GENERATING UNITS

Section	
217.450	Purpose
217.452	Severability
217.454	Applicability
217.456	Compliance Requirements
217.458	Permitting Requirements
217.460	Subpart U NO _x Trading Budget
217.462	Methodology for Obtaining NO _x Allocations
217.464	Methodology for Determining NO _x Allowances from the New Source Set-Aside
217.466	NO _x Allocations Procedure for Subpart U Budget Units
217.468	New Source Set-Asides for "New" Budget Units
217.470	Early Reduction Credits (ERCs) for Budget Units
217.472	Low-Emitter Requirements
217.474	Opt-In Units
217.476	Opt-In Process
217.478	Opt-In Budget Units: Withdrawal from NO _x Trading Program
217.480	Opt-In Units: Change in Regulatory Status
217.482	Allowance Allocations to Opt-In Budget Units

SUBPART V: ELECTRIC POWER GENERATION

Section	
217.521	Lake of Egypt Power Plant
217.700	Purpose

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217.702	Severability
217.704	Applicability
217.706	Emission Limitations
217.708	NO _x Averaging
217.710	Monitoring
217.712	Reporting and Recordkeeping

SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL
GENERATING UNITS

Section	
217.750	Purpose
<u>217.751</u>	<u>Sunset Provisions</u>
217.752	Severability
217.754	Applicability
217.756	Compliance Requirements
217.758	Permitting Requirements
217.760	NO _x Trading Budget
217.762	Methodology for Calculating NO _x Allocations for Budget Electrical Generating Units (EGUs)
217.764	NO _x Allocations for Budget EGUs
217.768	New Source Set-Asides for "New" Budget EGUs
217.770	Early Reduction Credits for Budget EGUs
217.774	Opt-In Units
217.776	Opt-In Process
217.778	Budget Opt-In Units: Withdrawal from NO _x Trading Program
217.780	Opt-In Units: Change in Regulatory Status
217.782	Allowance Allocations to Budget Opt-In Units

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Section	
217.800	Purpose
217.805	Emission Unit Eligibility
217.810	Participation Requirements
217.815	NO _x Emission Reductions and the Subpart X NO _x Trading Budget
217.820	Baseline Emissions Determination
217.825	Calculation of Creditable NO _x Emission Reductions
217.830	Limitations on NO _x Emission Reductions
217.835	NO _x Emission Reduction Proposal
217.840	Agency Action

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217.845	Emissions Determination Methods
217.850	Emissions Monitoring
217.855	Reporting
217.860	Recordkeeping
217.865	Enforcement
217.APPENDIX A	Rule into Section Table
217.APPENDIX B	Section into Rule Table
217.APPENDIX C	Compliance Dates
217.APPENDIX D	Non-Electrical Generating Units
217.APPENDIX E	Large Non-Electrical Generating Units
217.APPENDIX F	Allowances for Electrical Generating Units
217.APPENDIX G	Existing Reciprocating Internal Combustion Engines Affected by the NO _x SIP Call

Authority: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].

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 _____, amended in R08-19, at 33 Ill. Reg. ____, effective _____; amended in R09-20 at 33 Ill. Reg. ____, effective _____.

SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL
GENERATING UNITS

Section 217.751 Sunset Provisions

The provisions of this Subpart W shall not apply for any control period in 2009 or thereafter. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at 33 Ill. Reg. ____ effective _____)