

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

MOTION FOR EXPEDITED ACTION ON THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S ALTERNATIVE PROPOSAL

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by and through its attorneys, Alec M. Davis and HODGE DWYER & DRIVER, and pursuant to 35 Ill. Admin. Code § 101.500, hereby moves the Illinois Pollution Control Board ("Board") to grant this Motion for Expedited Action on IERG's Alternative Proposal ("Motion"). In support of this Motion, IERG states as follows:

IERG hereby submits to the Board its alternative proposal, attached hereto as Exhibit I, in the above-referenced proceeding. The proposal includes a new 35 Ill. Admin. Code Part 217 ("Part 217") Subpart U ("Subpart U"), revisions to Part 217 Appendix E ("Appendix E"), and revisions to update 35 Ill. Admin. Code § 217.104 (Incorporations by Reference) ("Section 217.104"). This alternative proposal is based on the most recent version of Part 217, as found on the Board's website.

IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is composed of fifty-four (54) member companies that are regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. This rulemaking substantially impacts IERG member companies since IERG member companies own and operate a large number of Non-Electrical Generating Units ("Non-EGUs"), or as referenced in the alternative proposal, budget units. Of the forty-six (46) budget units listed in Appendix E to Subpart U, thirty-

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eight (38) of the budget units¹ are owned or operated by IERG member companies.

Accordingly, it is imperative that IERG provide an alternative proposal to the Board for consideration in this rulemaking.

As detailed below, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") has failed to issue nitrogen oxide ("NOx") allowances for the 2009 control period to NOx State Implementation Plan ("SIP") Call budget units. The failure to do so will cause serious problems for affected Non-EGUs, as they may face potential liability for not holding NOx SIP Call allowances at the end of the control period as required by Subpart U. Thus, as described below, a rule is necessary in order to require the Illinois EPA to bring NOx SIP Call budget units into the Clean Air Interstate Rule ("CAIR") NOx Ozone Season Trading Program and distribute allowances accordingly.

I. FACTS IN SUPPORT OF ALTERNATIVE PROPOSAL

A. History of this Proceeding

On January 19, 2006, the Illinois EPA filed its Regulatory Proposal for NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217, proposing amendments to the NOx SIP Call regulations governing NOx emissions found at 35 Ill. Admin. Code Part 217, Subparts A, T, U and W. Illinois EPA, Regulatory Proposal for NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217, In the Matter of: NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217, R06-22 (Ill.Pol.Control.Bd. Jan. 19, 2006) (rulemaking hereafter cited as "R06-22").

The Illinois EPA stated that the purpose and effect of the proposal was:

¹ "Budget unit" is defined in the alternative proposal as "any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr that meets the criteria in Section 217.454(a) of this Subpart." See Exhibit 1.

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to update Part 217 to reflect recent amendments made by [the United States Environmental Protection Agency ("USEPA")] to the Code of Federal Regulations (CFR) concerning several test methods and procedures and by the Illinois General Assembly to Section 9.9 of the Act concerning the sale of NOx allowances and the repeal of the stay provisions. The proposal will also ensure that the NOx budgets for both the [Electric Generating Units ("EGUs")] and the non-EGUs are not reduced by low-emitters in a way that was not anticipated at the time the rules were originally adopted by the Board. Finally, the proposed clarifications to the dates and timing of allocations should simplify the administration of the NOx Trading Program. This proposal does not change the emission limits or require new control devices on affected sources.

Illinois EPA, Statement of Reasons, R06-22 at 10 (Ill.Pol.Control.Bd. Jan. 19, 2006).

In addition, the Illinois EPA stated that "Subparts T, U and W of Part 217 were adopted by the Board on December 21, 2000, March 1, 2001, and April 5, 2001, respectively. All three Subparts received approval by the [USEPA], as part of the Illinois State Implementation Plan ("SIP") for ozone on November 8, 2001. See 66 *Fed. Reg.* 56449 (DR f)." Id. at 1.

On February 2, 2006, the Board accepted the Illinois EPA's proposal for hearing. Order of the Board, R06-22 (Ill.Pol.Control.Bd. Feb. 2, 2006).

Thereafter, on March 13, 2006, IERG filed with the Board a Motion for Expedited Review requesting the Board to expedite its review of the Illinois EPA's proposed amendments to the NOx SIP Call requirements at Subpart U of Part 217. IERG, Motion for Expedited Review, R06-22 (Ill.Pol.Control.Bd. Mar. 13, 2006).

In its Motion for Expedited Review, IERG argued the following:

[S]ince the proposed amendments include allocations of NOx Allowances that are different for some sources than the current rule, it is unclear if the Agency will, or could properly, issue NOx Allowances for the 2007, 2008 and 2009 seasons before this rulemaking is complete. If the Agency allocates the NOx Allowances for 2007, 2008 and 2009 under the current rule, it may have to make an adjustment to the allocation to redistribute

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certain NOx Allowances. Such a redistribution would materially prejudice the owners of the units involved since they would not be certain of the number of NOx Allowances that they could rely upon until some future date after the allocation.

Id. at ¶ 6.

IERG also argued:

if this rulemaking is not expedited and the Agency does not allocate the NOx Allowances for 2007, 2008 and 2009 until after this rulemaking is complete, Illinois owners of units subject to Part 217 would be at disadvantage with regard to sources in other states. NOx Allowances are transferable between entities in approximately 20 states. Approximately 16 states in the NOx trading program have already made allocations for year 2007. Some states have made allocations through the year 2009. Sources in those states currently have the opportunity to sell the future year NOx Allowances, use them and sell older NOx Allowances or to engage in trades intended to maximize the value of their NOx Allowances. In Illinois, owners of units subject to Part 217, would be denied this opportunity until this rule is finalized.

Id. at ¶ 7.

Finally, IERG argued that “[s]ince the initial proposal of Part 217 was required to meet the State’s federal obligations under the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, the Board’s review of the proposed amendments, which clarify and update Part 217 regulations, should also be expedited.” Id. at ¶ 9. On March 27, 2006, the Illinois EPA filed with the Board a Response to Motion for Expedited Review, requesting the Board to enter an order denying IERG’s Motion for Expedited Review. Illinois EPA, Response to Motion for Expedited Review, R06-22 (Ill.Pol.Control.Bd. Mar. 27, 2006).

On March 31, 2009, IERG filed a Reply to Response to Motion for Expedited Review. IERG, Motion for Leave to File a Reply to Response to Motion for Expedited Review and Reply to Response to Motion for Expedited Review, R06-22 (Ill.Pol.Control.Bd. Mar. 31, 2006). Thereafter, on April 20, 2006, the Board

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"reluctantly" denied IERG's Motion for Expedited Review. Order of the Board, R06-22 (Ill.Pol.Control.Bd. Apr. 20, 2006).

On October 29, 2007, Hearing Officer Timothy J. Fox issued a Hearing Officer Order noting that there had been no activity in the docket since April 20, 2006, and directing the Illinois EPA to, within twenty-one (21) days of the date of the Hearing Officer Order, file a status report addressing the Illinois EPA's readiness to schedule and proceed to hearings. Hearing Officer Order, R06-22 (Ill.Pol.Control.Bd. Oct. 29, 2007).

On November 20, 2007, the Illinois EPA filed a status report, which stated the following, in pertinent part:

The Illinois EPA has had discussions with interested parties concerning R06-22, and will continue to do so. The Illinois EPA is in the process of evaluating whether the proposed amendments are now moot, or whether some of the amendments would best be addressed in an upcoming rulemaking concerning the transition of both industrial boilers and utility boilers from the NOx SIP Call trading program to the Clean Air Interstate Rule (CAIR) trading program. The Illinois EPA is planning to proceed with that rulemaking early this winter, and, at that time it will be in the best position to determine whether any outstanding issues from R06-22 would be best addressed in that rulemaking or whether the above proposal, in an amended format, should proceed.

Illinois EPA, Motion for Leave to File Instanter and Status Report, R06-22 (Ill.Pol.Control.Bd. Nov. 20, 2007).

On May 13, 2008, Hearing Officer Fox issued another Hearing Officer Order summarizing the Illinois EPA's November 20, 2007 status report, and also noting that there had been no activity in the docket since that filing. Hearing Officer Order, R06-22 (Ill.Pol.Control.Bd. May 13, 2008). In addition, Hearing Officer Fox directed the Illinois EPA to, within thirty (30) days of the date of the Hearing Officer Order, on or before June 12, 2008, file a status report addressing whether the Illinois EPA had determined

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whether to proceed in this docket with an amended proposal or to address the proposed amendments in another docket. Id.

On June 25, 2008, the Illinois EPA filed a status report, which stated the following, in pertinent part:

The Illinois EPA has had discussions with interested parties concerning R06-22, and will continue to do so. The Illinois EPA is in the process of evaluating whether the proposed amendments are now moot, or whether some of the amendments would best be addressed in an upcoming rulemaking concerning the transition of both industrial boilers and utility boilers from the NOx SIP Call trading program to the Clean Air Interstate Rule (CAIR) trading program. The Illinois EPA is planning to proceed with that rulemaking early this Fall, and, at that time it will be in the best position to determine whether any outstanding issues from R06-22 would be best addressed in that rulemaking or whether the above proposal, in an amended format, should proceed.

Illinois EPA, Motion for Leave to File Instant and Status Report, R06-22

(Ill.Pol.Control.Bd. June 25, 2008).

On July 2, 2008, Hearing Officer Fox issued another Hearing Officer Order summarizing the Illinois EPA's June 25, 2008 status report, and directing the Illinois EPA to, within 120 days of the date of the Hearing Officer Order, on or before October 30, 2008, file a status report addressing whether the Illinois EPA had determined whether to proceed in this docket with an amended proposal or to address the proposed amendments in another docket. Hearing Officer Order, R06-22 (Ill.Pol.Control.Bd. July 2, 2008).

On October 30, 2008, the Illinois EPA filed a status report, which stated the following, in pertinent part:

On July 11, 2008, the Clean Air Interstate Rule ("CAIR") rule was vacated by the United States Court of Appeals; however the requirements to address interstate transport from large NOx sources remain. *North Carolina v. EPA*, No. 05-1244 (D.C. Cir. July 2008). The decision left the

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NOx SIP Call trading program intact. The United States Environmental Protection Agency ("USEPA") requested a hearing on September 24, 2008, and the court has not yet ruled on that request.

In light of the above decision and the possible rehearing, the Illinois EPA is in the process of evaluating whether the proposed amendments affecting the NOx SIP Call trading program are now moot, or whether some of the amendments would best be addressed when the Illinois EPA addresses its obligations to mitigate interstate transport. The timetable for addressing that requirement is uncertain at this time; the Illinois EPA will be in a better position to determine its timetable when the court rules on USEPA's and other petitioners' requests for rehearing.

Illinois EPA, Status Report, R06-22 (Ill.Pol.Control.Bd. Oct. 30, 2008).

On November 7, 2008, Hearing Officer Fox issued another Hearing Officer Order summarizing the Illinois EPA's October 30, 2008 status report, and directing the Illinois EPA to, within 120 days of the date of the Hearing Officer Order, on or before March 9, 2009, file a status report addressing whether the Illinois EPA had determined that proposed amendments affecting the NOx SIP Call are moot or whether it would deal with the proposed amendments in meeting its obligations to mitigate interstate transport.

Hearing Officer Order, R06-22 (Ill.Pol.Control.Bd. Nov. 7, 2008).

On March 9, 2009, the Illinois EPA filed a status report, which stated the following, in pertinent part:

On July 11, 2008, the Clean Air Interstate Rule ("CAIR") rule was vacated by the United States Court of Appeals; however the requirements to address interstate transport from large NOx sources remain. *North Carolina v. EPA*, No. 05-1244 (C.A.D.C. Cir. July 2008). The decision left the NOx SIP Call trading program intact. The United States Environmental Protection Agency ("USEPA") requested a hearing on September 24, 2008. On December 23, 2008, the court reversed in part its earlier decision and remanded the CAIR rule to USEPA without vacatur. *North Carolina v. EPA*, 550 F.3d 1176 (C.A.D.C. 2008). This opinion means that the CAIR rule remains in effect.

In light of the above decision and the reinstatement of the obligation for meeting interstate NOx reductions for industrial boilers, the Illinois EPA

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is planning to replace Subpart U with a new rule and withdraw this rulemaking, R06-22, at that time. The new rulemaking will integrate the Non-EGUs into the CAIR rule. The timetable for addressing that requirement is expected to be the Spring of 2009.

Illinois EPA, Status Report, R06-22 (Ill.Pol.Control.Bd. Mar. 9, 2009). (Emphasis added.)

As set forth in Section III of this Motion, Subpart U has not been replaced with a new rule that integrates Non-EGUs into CAIR. The current Subpart U still requires that affected Non-EGUs hold NOx allowances on November 30, 2009; however, the Illinois EPA has failed to issue any NOx allowances for 2009 to Non-EGUs.

B. Background Regarding Alternative Proposal

On May 12, 2005, the USEPA adopted CAIR with the purpose of replacing the NOx SIP Call trading program. 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). The USEPA stated that it "will no longer operate the NOx SIP Call trading program after the 2008 ozone season." 70 Fed. Reg. at 25290. See also 40 C.F.R. § 51.122(r)(1).

On July 11, 2008, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") issued an order vacating CAIR in its entirety, and remanding the rule to the USEPA. North Carolina v. EPA, 531 F.3d 896 (D.C. Cir. 2008). The D.C. Circuit's opinion further stated that the NOx SIP Call trading program would remain in place. Id. at 930. On December 23, 2008, the D.C. Circuit issued an opinion modifying its July 11, 2008 order, and remanded CAIR without vacatur. North Carolina v. EPA, 550 F.3d 1176 (D.C. Cir. 2008).

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According to the USEPA, as of the date of this filing, "CAIR is in place in its final form. The Court ruling did not modify any of the provisions in CAIR. The original deadlines are still effective." *CAIR Frequent Questions – Post-Court Decision*, available at <http://www.epa.gov/airmarkt/progsregs/cair/faq-14.html>, last visited July 27, 2009.

CAIR includes the NOx ozone season trading program. As explained by the USEPA:

The ozone-season NOx model rule is designed to be used by those States that are affected by the CAIR ozone finding as well as take the place of the NOx SIP Call requirements. The CAIR ozone-season NOx program will be the only ozone-season NOx program that [USEPA] will administer. Because [USEPA] will no longer run a NOx SIP Call trading program, States may include their NOx SIP Call trading sources if they adopt the [USEPA]-administered CAIR ozone-season NOx program.

70 Fed. Reg. 25274. In addition, the trading program "will rely upon CAIR ozone-season NO[X] allowances allocated by the States," and States may participate in the NOx ozone season trading program by adopting the federal model cap and trade rules. *Id.* However, a state has the "flexibility to modify sections regarding NO[X] allocations and whether to include individual unit opt-in provisions."² *Id.* The USEPA further explained that the CAIR trading programs are "a fully approvable control strategy for achieving all of the emissions reductions required under today's rulemaking in a highly cost-effective manner," and "[s]tates may simply reference the model rules in their State rules and, thereby, comply with the requirements for statewide budget demonstrations . . ." 70 Fed. Reg. 25275. The USEPA stated:

² IERG's proposal does not adopt the optional individual opt-in provisions of the federal CAIR model rule. Although IERG's alternative proposal does not include the individual opt-in provisions of the federal CAIR model rule, it does allow, as the current Subpart U provides, emission units to become "opt-in budget units" subject to Subpart U requirements if certain criteria are met. The "opt-in budget units" are emission units that may participate in the trading program in accordance with Subpart U requirements.

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States that wish to achieve their CAIR ozone-season requirements through a [USEPA]-administered ozone-season NOx cap and trade program will adopt the CAIR model rule in subparts AAAA through IIII. . . . Because [USEPA] will no longer administer the trading program for the NOx SIP Call, States that wish to continue to meet their NOx SIP Call obligations through a [USEPA]-administered cap and trade program will also adopt the CAIR ozone-season model rule. NOx SIP Call States will "sun set" their NOx SIP Call rules for sources that will move into the CAIR NOx ozone-season program.³

Id.

The USEPA has spoken to the issue of what is required to address emissions from Non-EGUs to satisfy the requirements of the NOx SIP Call, in light of the discontinuance of the NOx SIP Call trading program after the 2008 ozone season:

If States affected by the NOx SIP Call do not wish to use EPA's CAIR ozone season NOx trading program to achieve reductions from non-EGU boilers and turbines required by the NOx SIP Call, they would be required to submit a SIP Revision deleting the requirements related to non-EGU participation in the NOx SIP Call Budget Trading Program and replacing them with new requirements that achieve the same level of reduction. . . .

70 Fed. Reg. at 25290. (Emphasis added.)

Alternatively, the USEPA has indicated that a State can meet the requirements of the NOx SIP Call for Non-EGUs through participation in the CAIR ozone season NOx trading program:

If the only changes a State makes with respect to its NOx SIP Call regulations are: (1) To bring non-EGUs that are currently participating in the NOx SIP Call Budget Trading Program into the CAIR ozone season program using the same non-EGU budget and applicability requirements that are in their existing NOx SIP Call Budget Trading Program;⁴ and (2)

³ Since the alternative proposal is a full replacement of the current Subpart U, the result is a "sunsetting" of the current Subpart U.

⁴ The alternative proposal is bringing NOx SIP Call budget units into CAIR for trading purposes only and is not intended to require that budget units meet the CAIR emission reduction requirements.

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to achieve all of the emissions reductions required under the CAIR from EGUs by participating in the CAIR ozone season NOx trading program, EPA will find that the State continues to meet the requirements of the NOx SIP Call.

70 Fed. Reg. at 25290. (Emphasis added.) Thus, CAIR allows Non-EGUs to trade under CAIR to satisfy NOx SIP Call budget requirements.

On September 7, 2007, Illinois adopted amendments to 35 Ill. Admin. Code Part 225 to implement the sulfur dioxide ("SO2"), NOx annual, and NOx ozone season trading programs under CAIR, applicable only to EGUs. 31 Ill. Reg. 12864 (Sept. 7, 2007). On October 16, 2007, the USEPA approved the Illinois SIP revision to implement CAIR for EGUs. In doing so, the USEPA stated:

Illinois' CAIR submittal does not fully address the replacement of the NOx SIP Call. Illinois' CAIR NOx ozone season trading program addresses the emissions from EGUs and do [sic] not address emissions from non-EGUs that are covered by the NOx SIP Call trading program.

Approval of Implementation Plans of Illinois: Clean Air Interstate Rule, 72 Fed. Reg. 58528, 58531 (Oct. 16, 2007). (Emphasis added.)

To date, the Illinois EPA has done nothing to address the NOx SIP Call budget trading program for Non-EGUs. Therefore, because of the Agency's failure to act, IERG is compelled to offer this alternative proposal to address the problems that will be faced by owners/operators of affected Non-EGUs should they not hold the requisite NOx allowances through no fault of their own.

The Illinois EPA's failure to choose to use USEPA's "CAIR ozone season NOx trading program to achieve reductions from non-EGU boilers and turbines" required by the NOx SIP Call or to "submit a SIP Revision deleting the requirements related to non-EGU participation in the NOx SIP Call Budget Trading Program and replacing them with

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new requirements . . ." has placed the State's owners/operators of affected Non-EGUs in a critical bind. The source of the problem is two-fold. First, the USEPA ceased to operate the NOx SIP Call trading program after the 2008 ozone season. Second, facilities subject to Subpart U are required by existing Subpart U to hold sufficient NOx SIP Call allowances to cover NOx emissions for the 2009 ozone season and beyond. The Illinois EPA failed to issue any NOx allowances to Non-EGUs for 2009, and now, there is no mechanism by which the Illinois EPA may allocate those allowances.

II. EMERGENCY RULE

Simultaneously with this Motion, IERG submitted a separate Motion for Emergency Rule requesting that the Board, pursuant to its authority to adopt an emergency rule, replace the current version of Subpart U with a revised Subpart U⁵ by bringing NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program using a slightly revised Non-EGU budget, and the same applicability requirements as found in the current Subpart U. See Motion for Emergency Rule, R06-22 (Ill.Pol.Control.Bd. Aug. 3, 2009). As discussed in the Motion for Emergency Rule, an emergency rule is necessary because the Illinois EPA failed to issue NOx allowances to Subpart U sources for the 2009 control period. Id. Accordingly, the Motion for Emergency Rule requests the adoption of a rule for purposes of requiring the Illinois EPA to allocate allowances for only the 2009 control period. This Motion, on the other hand, is intended to be the rule requiring the allocation of allowances for the 2010 control period and beyond.

⁵ The revised Subpart U attached to the Motion for Emergency Rule as Exhibit 1 is identical to IERG's alternative proposal, attached hereto as Exhibit 1.

III. PURPOSE AND EFFECT OF IERG'S ALTERNATIVE PROPOSAL

This alternative proposal will satisfy the requirement for Illinois to have regulations in place to address the NOx SIP Call emissions reductions from Non-EGUs, absent the USEPA's continued administration of the NOx SIP Call trading program. The amendments proposed in this alternative proposal comply with the approach suggested by the USEPA to satisfy the NOx SIP Call requirements: by bringing Non-EGUs that are currently participating in the NOx SIP Call budget trading program into the CAIR NOx Ozone Season Trading Program using the same Non-EGU budget, with minor exceptions (see further discussion below), and applicability requirements that are in the existing NOx SIP Call budget trading program. Further, this alternative proposal gives effect to Section 9.9 of the Illinois Environmental Protection Act ("Act"), under which the Illinois General Assembly finds emissions trading to be a cost effective means of reducing NOx emissions, and requires the Agency to propose and the Board to "adopt regulations to implement an interstate NOx trading program." 415 ILCS 5/9.9(a)(3) and 9.9(b). Since the Agency has failed to take action to adopt rules that address the NOx SIP Call requirements for Non-EGUs beyond the 2008 ozone season, IERG offers the alternative proposal, as set forth in Exhibit 1, as an appropriate revision to the current Subpart U in order to bring NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program. The effect of this alternative proposal is to allow the continued trading of NOx emissions allowances as seamlessly as possible so that operations of industry throughout Illinois can continue to comply with the federal NOx SIP Call requirements for Non-EGUs.

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According to the current version of Section 217.456(d) of Subpart U, owners/operators of affected Non-EGUs in Illinois, including those owners/operators that are IERG member companies, must hold NO_x allowances for every ton of NO_x emitted during the 2009 ozone season on November 30, 2009, and thereafter. In addition, most of those sources have "budget unit" requirements in their Clean Air Act Permit Program ("CAAPP") permits. For example, several companies have the following provision in the CAAPP permits issued for their facilities:

Beginning in 2004, by November 30 of each year, the allowance transfer deadline, the account representative of each budget unit at this source must hold allowances available for compliance deductions under 40 CFR 96.54 in the budget unit's compliance account or the source's overdraft account in an amount that shall not be less than the budget unit's total NO_x emissions for the preceding control period (rounded to the nearest whole ton), as determined in accordance with applicable monitoring requirements, plus any number of allowances necessary to account for actual utilization (e.g., for testing, start-up, malfunction, and shut down) under 40 CFR 96.42(e) for the control period, pursuant to 35 IAC 217.456(d)(1). For purposes of this requirement, an allowance may not be utilized for a control period in a year prior to the year for which the allowance is allocated, pursuant to 35 IAC 217.456(d)(4).

See Condition 6.4(a), CAAPP Permit No. 96030001; Condition 6.1.4(a), CAAPP Permit No. 95120306; and Condition 6.1.4(a), CAAPP Permit No. 99110011.

If affected sources with Non-EGUs subject to Subpart U cannot receive their allocated NO_x Budget Trading Program allowances for the current 2009 ozone season, the effect is to cause those units to be in violation of Subpart U and their CAAPP permits, which remain enforceable by the Illinois EPA, the USEPA, and third-parties. Because the Illinois EPA failed to meet its obligation to either join USEPA's CAIR NO_x Ozone Season Trading Program for Non-EGUs or to submit a SIP revision that would provide for the same level of reduction as that achievable by participation in the NO_x SIP Call

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Budget Trading Program, owners/operators of affected Non-EGUs face potential liability for failure to hold required NOx allowances. Such potential liability must be disclosed by publicly-held companies on their Securities Exchange Commission filings, impacting their bottom lines during these times of hardship in the United States economy.

IERG recognizes the availability of a mechanism to obtain the required allowances that companies must hold at the end of the ozone season, thus avoiding such potential liability. They may purchase CAIR NOx allowances, although it is uncertain whether such purchases would be deemed in compliance with a requirement to hold NOx SIP Call allowances. There is no mechanism, however, to use such allowances to demonstrate compliance since the USEPA will not establish CAIR compliance accounts for sources until the Illinois EPA takes steps to adopt a rule for Non-EGUs. Owners/operators of affected Non-EGUs will be placed in the position of expending capital, again impacting their bottom lines, to avoid potential compliance violations that would not exist but for the Illinois EPA's failure to propose a necessary rule at the appropriate time.

Adoption of this alternative proposal would have a positive economic impact. Owners/operators of affected Non-EGUs would benefit by avoiding the potentially costly consequences described above. Further, by enabling the owners/operators of affected Non-EGUs to participate in the federal CAIR NOx Ozone Season Trading Program, units that are able to efficiently reduce their emissions of NOx will be able to take advantage of the large, multi-state market for selling and/or purchasing their allowances, as may be necessary. This alternative proposal is intended to provide the same degree of environmental benefit that was achieved under current Subpart U. The amendments

proposed herein will maintain the same budget and applicability requirements, as provided by the USEPA in its approval of Illinois' NOx rules as satisfying the State's NOx SIP Call obligations. Approval and Promulgation of Implementation Plans; Illinois NOx Regulations, 66 Fed. Reg. 56449 (Nov. 8, 2001).

The costs to the Illinois EPA in implementing the CAIR NOx Ozone Season Trading Program for specified NOx generating units will be minimal, as it is in essence the same program as is the current Subpart U NOx trading program and will be administered through federal CAIR.

IV. SUMMARY OF PROPOSED AMENDMENTS

IERG understands that it is the preference of the Illinois EPA to have the NOx ozone season trading program for Non-EGUs resemble the Illinois CAIR Ozone Season Trading Program in place for EGUs. Thus, the proposed amendments have been drafted to mirror as closely as possible the Illinois regulations implementing CAIR ozone season trading for EGUs, contained in 35 Ill. Admin. Code Part 225, Subpart E. The various provisions, as described in greater detail below, amend the current Part 217 Subpart U trading program, to refer to the CAIR NOx Ozone Season Trading Program and associated requirements under CAIR, and incorporate the necessary references under Subpart A. Finally, an updated Appendix E is included, reflecting revisions, as set forth in detail below.

A. Subpart A

The proposal amends Subpart A by adding as incorporated by reference federal provisions at 40 CFR Part 78 and selected provisions at 40 CFR Part 96 to Section 217.104, which is necessary to implement the CAIR NOx Ozone Season Trading

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Program. In addition, references to provisions for 40 C.F.R. Parts 75 and 96 have been updated.

B. Subpart U

IERG's alternative proposal deletes the current version of Subpart U and replaces it with a new Subpart U that mirrors as closely as possible the structure and requirements of Part 225 Subpart E, as well as retains requirements that are unique to Subpart U, such as the applicability, low emitter, and opt-in provisions, which are required by Section 9.9 of the Act. 415 ILCS 5/9.9. Substantive changes made to the current version of Subpart U, as reflected by IERG's alternative proposal, include the following:

- Revises and renumbers sections in order to mirror the format and structure of Part 225 Subpart E;
- Renames sections and revises terminology to closely resemble Part 225 Subpart E, where possible, and federal model rule for the CAIR NOx Ozone Season Trading Program;
- Adds definitions for the following: Agency, Budget Permit, Budget Unit, Board, CAIR Designated Representative, CAIR NOx Ozone Season Trading Budget, Compliance Account, and NOx Trading Program applicable only to this Subpart (35 Ill. Admin. Code § 217.452);
- Specifically exempts from the Subpart certain boilers used to combust and thereby control carbon monoxide emissions from a fluidized catalytic cracking unit, and deletes references to Subpart W and the NOx SIP Call (35 Ill. Admin. Code § 217.454);
- Revises compliance requirements to include compliance with the provisions of the federal model rule for the CAIR NOx Ozone Season Trading Program. (35 Ill. Admin. Code § 217.456(a));
- Adds a provision stating that sources with existing NOx budget permits issued under the NOx trading program are in compliance with CAIR permitting requirements (35 Ill. Admin. Code § 217.456(c));

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- Adds a requirement that budget units are subject to the emission requirements for the control period starting May 1, 2009, or the deadline for meeting the unit's monitoring certification requirements (35 Ill. Admin. Code § 217.456(d));
- Adds a requirement that for the 2009 control period, CAIR NOx Ozone Season sources may submit a single report covering the entire control period (35 Ill. Admin. Code § 217.456(e)(3));⁶
- Adds a section on appeal procedures for decisions of the USEPA (35 Ill. Admin. Code § 217.457);
- Adds a section regarding the contents of the NOx budget permit (35 Ill. Admin. Code § 217.458(c));
- Revises the total number of budget allowances and corresponding New Unit Set Aside ("NUSA") allowances (35 Ill. Admin. Code § 217.460(a)) (see further discussion below regarding revisions to Appendix E);
- Adds new Section 217.461 setting out the timing for ozone season allocations for the 2009 control period and control periods thereafter (35 Ill. Admin. Code § 217.461);
- Revises the section on NUSAs to combine the current Subpart U new source set aside sections into one cohesive section and includes necessary provisions similar to those provided in Part 225 Subpart E (35 Ill. Admin. Code § 217.466);
- Deletes Section 217.468 of the current Subpart U and places such provisions in new Section 217.466, which provides the rules for NUSAs;
- Deletes Section 217.470 of the current Subpart U because early reduction credits are no longer necessary; and

⁶ The federal CAIR model rule requires sources to submit quarterly reports. 40 C.F.R. § 96.374. However, because of the failure to have a rule in place that brings NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program, the deadline for the quarterly report covering the second quarter has passed. Such quarterly reports would have included information on the first part of the ozone season. Since sources subject to Subpart U did not have a CAIR rule with which to comply, the quarterly report for the third quarter, covering the remainder of the ozone season, may cover the entire 2009 control period. A provision, as referenced above, has been added to the reporting requirements to clarify that for the 2009 ozone season only a single report is allowed. For the 2010 control period and beyond, sources will submit reports in accordance with applicable regulations.

- Adds Board Notes to clarify purpose of particular sections of the revised rule language (35 Ill. Admin. Code §§ 217.461, 217.462, and 217.472).

C. Appendix E

I. Background

In April 2001, the Board adopted the original, final Subpart U rules. Board Order, In the Matter of: Proposed New 35 Ill. Adm. Code 217.Subpart U, NOx Control and Trading Program for Specified NOx Generating Units, Subpart X, Voluntary NOx Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211, PCB No. 01-17 (Ill.Pol.Control.Bd. Apr. 5, 2001) (hereafter "Final Order, 2001 Subpart U Rulemaking"). The rules adopted by the Board included Appendix E to Subpart U, which listed the large Non-EGUs subject to Subpart U. On November 8, 2001, the USEPA approved the Subpart U rules as satisfying Illinois' NOx SIP Call requirements, but made two adjustments to the allocation distribution as listed in Appendix E. 66 Fed. Reg. 56449 (Nov. 8, 2001), attached hereto as Exhibit 2.

In approving Subpart U as satisfying Illinois' NOx SIP Call requirements, the USEPA adjusted the Illinois allowance budget by allocating allowances to LTV Steel Company ("LTV Steel") and removing the boiler owned by the University of Illinois from the Non-EGU inventory. Id. at 56453. The USEPA stated in regards to LTV Steel that it "is adjusting Illinois' budget to include LTV Steel's Boiler 4B as a 60 percent control level, which under Illinois' rules will result in LTV Steel receiving an allocation for 60 tons of allowances for each ozone season." Id. at 56452. The allocation of sixty (60) tons of allowances to LTV by the USEPA is consistent with the footnote included in the Appendix E adopted in 2001, which stated that the allocation to LTV Steel would be

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adjusted at such time that the USEPA made an allowance to LTV Steel for Boiler 4B. Final Order, 2001 Subpart U Rulemaking at 76.

The USEPA also removed a boiler owned by the University of Illinois from the inventory because the boiler "is below 250 mmBTU/hour, so the source should have remained uncontrolled." Approval and Promulgation of Implementation Plans; Illinois NOx Regulations, 66 Fed. Reg. 34382, 34390 (June 28, 2001), attached hereto as Exhibit 3. The Illinois EPA recognized that the University of Illinois' boiler is not included in the "NOx trading program and does not allocate allowances for such boiler to the source." Condition 7.2.4(b), CAAPP Permit No. 95120068. The USEPA concluded that with the adjustments for LTV Steel and the University of Illinois, "the sources in subpart U have a total allocation of 4856 tons per ozone season." 66 Fed. Reg. at 34387.

In addition to the discrepancies in the inventory and allocations of allowances discussed above, another source, Bunge Milling, Inc. ("Bunge"), was inadvertently excluded from the Appendix E, and accordingly, allocations for Bunge's CFB Boiler were never included in the Illinois budget. In September 2005, Bunge requested determinations from the Illinois EPA and the USEPA regarding whether it was subject to Subpart U. Letter from Katherine D. Hodge, Hodge Dwyer Zeman, to Douglas P. Scott, Illinois EPA (Sept. 20, 2005); Letter from Katherine D. Hodge, Hodge Dwyer Zeman, to Thomas V. Skinner, USEPA (Sept. 20, 2005), attached collectively hereto as Exhibit 4. In response, the Illinois EPA concluded that Bunge's CFB Boiler "is not currently covered by the NOx Budget Trading Program." Letter from Laurel Kroack, Illinois EPA, to Katherine Hodge, Hodge Dwyer Zeman (Dec. 13, 2005), attached hereto as Exhibit 5. Illinois EPA explained:

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[T]his exclusion of Bunge from the program was inadvertent and the Illinois EPA believes that Bunge's boiler should be a listed non-EGU in Appendices D and E of Part 217. As such Illinois EPA plans to correct this exclusion in the upcoming amendments to Part 217. To accomplish this, the Illinois EPA will work with Bunge and will request that USEPA add the appropriate number of NOx allowances for Bunge's CFB Boiler to the statewide NOx budget for non-EGUs.

Id. at 2. The USEPA concurred "with Illinois EPA's determination that the CFB boiler . . . is not subject to the NOx SIP regulations published in the Illinois SIP at 35 IAC Part 217, Subparts A, U, and W." Letter from George Czerniak, USEPA, to Katherine Hodge, Hodge Dwyer Zeman (Dec. 22, 2005), attached hereto as Exhibit 6.

On May 3, 2006, Bunge submitted a formal request to the Illinois EPA regarding the inclusion of the CFB Boiler into the Subpart U program. Letter from Gale Newton, Hodge Dwyer Zeman, to Gary Beckstead, Illinois EPA (May 3, 2006), attached hereto as Exhibit 7. Subsequently, on August 17, 2006, the Illinois EPA submitted a request to USEPA for the allocation of an additional 101 allowances to the Illinois budget for the Illinois EPA to allocate to Bunge for its CFB Boiler. Letter from Laurel Kroack, Illinois EPA, to Mary Shellabarger, USEPA (Aug. 17, 2006), attached hereto as Exhibit 8.

Thereafter, on December 10, 2007, the Illinois EPA informed Bunge that because the NOx Budget Trading Program would be sunseting in 2008 and because the Illinois EPA "met its commitment to Bunge by requesting that USEPA approve additional allowances" for Bunge's CFB Boiler, "it would be useless to pursue the current amendments under proposal R06-22, as that docket merely provides a space holder (i.e., an asterisk) where a possible allocation could be documented." Letter from Rachel Doctors, Illinois EPA, to Gale Newton, Hodge Dwyer Zeman (Dec. 10, 2007), attached hereto as Exhibit 9. Illinois EPA concluded:

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USEPA has indicated that it will never provide the necessary NOx allowances to populate the account and the applicable program sunsets in less than a year. In addition, all other significant issues in R06-22 are moot or will be best addressed in the Illinois EPA's upcoming (Winter 2008) regulatory proposal for NOx RACT for industrial boilers. Hence, the Illinois EPA plans to withdraw this regulatory proposal.

Id.

On August 27, 2008, Bunge renewed its request to the Illinois EPA for 101 NOx SIP Call allowances for its CFB Boiler. Letter from Katherine Hodge, Hodge Dwyer Zeman, to Laurel Kroack, Illinois EPA (Aug. 27, 2008), attached hereto as Exhibit 10. Further, Bunge requested that the Illinois EPA renew its request to USEPA for 101 allowances for the CFB Boiler, as well as move forward "with action to seek amendments to the Illinois NOx SIP Call Program for non-EGUs, to include Bunge's CFB Boiler." Id. at 2.

Not only was Bunge inadvertently excluded from Appendix E, Flint Hills Resources, LP's ("Flint Hills") Joliet Facility was also mistakenly excluded from Appendix E. In the Illinois EPA's Statement of Reasons in this rulemaking, the Illinois EPA states that it is proposing to "update the listing of existing non-EGUs in Appendix E" and is also "proposing to add Flint Hills . . . and, to provide an allocation of 6 allowances." Statement of Reasons, R06-22 at 9. The Illinois EPA further stated that the allocations of several other sources listed in Appendix E were reduced to allow for the allocation. Id. As stated in IERG's comments previously filed in this rulemaking, "Flint Hills Boiler CB-706 was covered by the Program but did not receive an allocation of NOx Allowances." Comments of IERG, R06-22 at 3 (Ill.Pol.Control.Bd. Mar. 13, 2006). Accordingly, Flint Hills has been added to the revised Appendix E to IERG's alternative proposal. However, Flint Hills requests an additional eight allowances to better reflect

the facility's current operating scenario, which has changed since this rulemaking was initially proposed. Thus, the Appendix E to IERG's alternative proposal provides fourteen (14) allowances for Flint Hills.

It is possible to provide the additional allowances to Flint Hills because the total budget for Non-EGUs includes allowances that were never distributed to Jefferson Smurfit Corporation ("Jefferson Smurfit"). The current Appendix E lists Jefferson Smurfit as a source and allocates thirty-nine (39) allowances for its boiler. However, the Illinois EPA has not distributed the thirty-nine (39) allowances to Jefferson Smurfit because it does not own or operate a budget unit subject to Subpart U. Thus, the total budget includes thirty-nine (39) allowances that can be reallocated to other Appendix E sources. Appendix E to IERG's alternative proposal deletes Jefferson Smurfit as a source and reallocates the thirty-nine (39) allowances that would have been distributed to Jefferson Smurfit if it owned or operated a budget unit to Flint Hills and Citgo Petroleum Corporation ("Citgo").

The allocation of allowances to Citgo has also been revised. The current Appendix E shows an allocation of twenty-three (23) allowances to Citgo's facility; however, the allocation of only twenty-three (23) allowances is artificially low for several related reasons. A single baseline year (1995) was used by the Illinois EPA to establish the summertime allocations under Subpart U, and during this time, Citgo's Aux Boiler was shutdown for maintenance for almost seven weeks (late July through mid-September), i.e. almost one-third of the ozone season. In addition, the summer in 1995 was an extremely hot summer, and since the Aux Boiler is a swing boiler, it was not fired as hard as it could have been when it was operating, since steam demand was further

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depressed. Thus, for the Aux Boiler, 1995 was not a representative year; yet, it was used to establish the initial allocation of allowances. The additional allocation of sixteen (16) allowances to Citgo shown in the revised Appendix E to IERG's alternative proposal accounts for the representative operation of the Aux Boiler. Further, as with Flint Hills, the additional allowances allocated to Citgo are already included in the total budget, but were never distributed to Jefferson Smurfit because it did not operate an emissions unit subject to Subpart U.

2. Revisions to Appendix E

IERG's alternative proposal revises Appendix E to include the allocation of sixty (60) allowances to LTV Steel's boiler, which was sold to Chicago Coke Company, Inc. ("Chicago Coke"), and the deletion of the University of Illinois boiler. 66 Fed. Reg. at 56453. Further, in regards to Bunge, because the Illinois EPA has failed to propose a rule to replace the NOx Budget Trading Program, circumstances have changed from the ones described in Illinois EPA's December 10, 2007 letter. Accordingly, the total budget in Appendix E to the alternative proposal was adjusted to include 101 allowances that the Illinois EPA requested for Bunge's CFB Boiler. However, IERG understands that the USEPA will not take action on the Illinois EPA's request to add 101 allowances to the Illinois' budget for Bunge's CFB Boiler until the allocation for the CFB Boiler is set forth in a final rule so IERG's alternative proposal includes an allocation of 101 allowances for Bunge's CFB Boiler, rule language, and the pending request from the Illinois EPA to USEPA for 101 allowances for Bunge's CFB Boiler.

As discussed above, not only was Bunge inadvertently excluded from Appendix E, Flint Hills was also excluded from Appendix E. Statement of Reasons, R06-22 at 9;

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see also Comments of IERG, R06-22 at 3. Accordingly, Flint Hills has been added to Appendix E and allocated fourteen (14) allowances, and as discussed above, Citgo has also been allocated an additional sixteen (16) allowances. In addition, the following revisions have been made to the current version of Appendix E and are reflected in IERG's alternative proposal:

- Company names, source identification numbers, and unit designations have been updated;
- Allowance allocations have been aggregated by source rather than by budget unit because, unlike under the NOx Budget Trading Program, compliance accounts under the CAIR NOx Ozone Season Trading Program will only be established for sources rather than for individual budget units;
- The allocation to Archer Daniels Midland Company ("ADM") has been divided between ADM's Decatur Complex and Peoria Plant;
- As discussed above, sixty (60) allowances have been added to the Illinois budget and allocated to Chicago Coke, the new owner of the LTV Steel facility;
- Jefferson Smurfit, as discussed above, has been removed from Appendix E since it is no longer an owner or operator of a budget unit;
- As discussed above, the University of Illinois Abbott Power Plant has been removed as a source as approved by the USEPA;
- As discussed above, Bunge has been added to the list of sources, and the budget has been revised to include the 101 allowances that the Illinois EPA requested from the USEPA for Bunge;
- An additional sixteen (16) allowances have been allocated to Citgo in order to account for the unrepresentative year in which the initial allocation was determined; and
- Flint Hills has been added as a source, as discussed in the Illinois EPA's Statement of Reasons, and allocated fourteen (14) allowances.

3. Allocation of Allowances

The Illinois budget has been recalculated based on the addition of allowances for Chicago Coke and Bunge and the removal of the University of Illinois from Appendix E. Further, individual allocations to sources have been slightly revised to distribute the allowances that would have been allocated to Jefferson Smurfit to Flint Hills and Citgo. The adjustment to the budget is based on the calculation provided in Exhibit 11.

WHEREFORE, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP requests that the Board to grant this Motion for Expedited Action on IERG's Alternative Proposal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: August 3, 2009

By: /s/ Katherine D. Hodge
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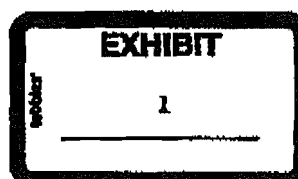
IERG:001/R Dockets/Fil/R06-22/Motion for Expedited Action on IERG's Alternative Proposal (8.03.09)

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Section 217.104 Incorporations by Reference

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

- a) The phenol disulfonic acid procedures, as published in 40 CFR 60, Appendix A, Method 7 (2000);
- b) 40 CFR 96, subparts B, D, G, and H (~~1992~~2009);
- c) 40 CFR 96.1 through 96.3, 96.5 through 96.7, 96.50 through 96.54, 96.55 (a) & (b), 96.56 and 96.57 (~~1992~~2009);
- d) 40 CFR 60, 72, 75 & 76 (2002~~6~~);
- e) Alternative Control Techniques Document---- NO_x Emissions from Cement Manufacturing, EPA-453/R-94-004, U. S. Environmental Protection Agency-Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, March 1994;
- f) Section 11.6, Portland Cement Manufacturing, AP-42 Compilation of Air Emission Factors, Volume 1: Stationary Point and Area Sources, U.S. Environmental Protection Agency-Office of Air Quality Planning and Standards, Research Triangle Park, N. C. 27711, revised January 1995;
- g) 40 CFR 60.13 (2001);
- h) 40 CFR 60, Appendix A, Methods 3A, 7, 7A, 7C, 7D, 7E, 19, and 20 (2000);
- i) ASTM D6522-00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (2000);
- k) Standards of Performance for Stationary Combustion Turbines, 40 CFR 60, Subpart KKKK, 60.4400 (2006); and
- l) Compilation of Air Pollutant Emission Factors: AP-42, Volume I: Stationary Point and Area Sources (2000), USEPA;
- m) 40 CFR 96, CAIR NO_x Ozone Season Trading Program, subparts AAAA (excluding 40 CFR 96.304, 96.305(b)(2), and 96.306), BBBB, FFFF, GGGG, and HHHH (2009); and
- n) 40 CFR 78 (2009).



| (Source: Amended at 31 Ill. Reg. 14254, effective September 25, 2007)

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

~~Section 217.450 — Purpose~~

~~The purpose of this Subpart is to cap the emissions of nitrogen oxides (NO_x) during the ozone control period from units subject to the provisions of this Subpart (budget units) by determining source allocations and by implementing the federal NO_x Trading Program, 40 CFR 96, consistent with the provisions of this Subpart.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.452 — Severability~~

~~If any Section, subsection or clause of this Subpart is found invalid, such finding shall not affect the validity of this Subpart as a whole or any Section, sentence or clause not found invalid.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.454 — Applicability~~

- ~~a) — This Subpart applies to any fossil fuel fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr and that is:~~
- ~~1) — A unit listed in Appendix E of this Subpart, irrespective of any subsequent changes in ownership, unit designation, or name of the unit; or~~
 - ~~2) — A unit not listed in Appendix E of this Subpart that:~~
 - ~~A) — At no time serves a generator producing electricity for sale;~~
 - ~~B) — At any time serves a generator producing electricity for sale, if such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is smaller than this calculated number, the unit is subject to the provisions of this Subpart, but if the size of the generator is greater than this calculated number, the unit is subject to the provisions of Subpart W of this Part;~~
 - ~~C) — Is part of any source, as that term is defined in 35 Ill. Adm. Code Section 211.6130, listed in Appendix E of this Part; or~~

- ~~D) Is a unit subject to Subpart W of this Part (excluding any unit listed in Appendix F of this Part, regardless of any change in ownership or any change of operator), and the owner or operator makes a permanent election, at the time of applying for a budget permit pursuant to this Part, to subject the unit to the requirements of this Subpart rather than Subpart W of this Part. Any unit for which such an election is made will not receive an allocation from the Subpart U or Subpart W NO_x Trading Budget.~~
- ~~b) Those units that meet the above criteria and are subject to the NO_x Trading Program emissions limitations contained in this Subpart are budget units.~~
- ~~e) Low emitter status: Notwithstanding subsection (a) of this Section, the owner or operator of a budget unit subject to the requirements of subsection (a) of this Section may elect low emitter status by obtaining a permit with federally enforceable conditions that meet the requirements of Section 217.472(a). Starting with the effective date of such permit, the unit shall be subject only to the requirements of Section 217.472.~~
- ~~d) The owner or operator of any budget unit not listed in Appendix E of this Part but subject to this Subpart shall not receive an allocation of NO_x allowances from the Subpart U or Subpart W NO_x Trading Budget, except for any allowance from the new source set aside in accordance with Section 217.468 of this Subpart. Such unit must acquire NO_x allowances in an amount not less than the NO_x emissions from such budget unit during the control period (rounded to the nearest whole ton) in accordance with the federal NO_x Trading Program, Subpart X of this Part or pursuant to a permanent transfer of NO_x allocations pursuant to Section 217.462(b) of this Subpart.~~
- ~~e) Notwithstanding any other provisions of this Subpart, a source and units at the source subject to the provisions of subsection (a) of this Section will become subject to this Subpart on the first day of the control season subsequent to the calendar year in which all of the other states subject to the provisions of the NO_x SIP Call (63 Fed. Reg. 57355 (October 27, 1998)) that are located in USEPA Region V or are that contiguous to Illinois have adopted regulations to implement NO_x trading programs and other required reductions of NO_x emissions pursuant to the NO_x SIP Call, and such regulations have received final approval by USEPA as part of the respective states' SIPs for ozone, or a final FIP for ozone promulgated by USEPA is effective. [415 ILCS 5/9.9(f)]~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.456 Compliance Requirements~~

~~All budget units subject to the requirements of this Subpart must comply with the following:~~

- a) ~~The requirements of this Subpart and 40 CFR 96, excluding 40 CFR 96.4(b), 96.55(e) and subparts C, E, and I, as incorporated by reference in Section 217.104 of this Part. To the extent that this Subpart contains provisions which are inconsistent with any provisions of 40 CFR 96, the owner or operator of budget units subject to this Subpart shall comply with the provisions of this Subpart in lieu of those provisions which were incorporated by reference.~~
- b) ~~Budget permit requirements:~~
- 1) ~~The owner or operator of each source with one or more budget units at the source subject to this Subpart must submit a complete permit application for a budget permit in accordance with the provisions of Section 217.458(a)(4), (a)(5) or (a)(6), as applicable, to be issued by the Agency with federally enforceable conditions covering the NO_x Trading Program (budget permit), and that complies with the requirements of Section 217.458 of this Subpart.~~
 - 2) ~~The owner or operator of one or more budget units subject to this Subpart must operate each such budget unit in compliance with such budget permit or complete budget permit application, as applicable.~~
 - 3) ~~The owner or operator of one or more budget units subject to this Subpart, at the time of filing an application for a permit under this Section, must submit a complete application for either a permit incorporating a source-wide overdraft account (as such term is defined in 40 CFR 96.2), or a permit incorporating unit specific compliance accounts for each budget unit at the source subject to this Subpart. Such election shall be at the sole discretion of the owner or operator of the source and the Agency shall incorporate such election into a permit issued to the source pursuant to this Subpart.~~
- c) ~~Monitoring requirements:~~
- 1) ~~For budget units subject to the requirements of this Subpart, and which commence operation on and after January 1, 2000, the owner or operator of each such budget unit at the source must comply with the monitoring requirements of 40 CFR 96, subpart H. The account representative of each such budget unit at the source shall comply with those sections of the monitoring requirements of 40 CFR 96, subpart H, applicable to an account representative.~~
 - 2) ~~The compliance of each budget unit subject to the requirements of subsection (c)(1) or subsection (c)(3)(A) of this Section with the control period NO_x emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart H.~~
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~~3) For budget units which commenced operation prior to January 1, 2000:~~

~~A) The owner or operator of each such budget unit at the source must comply with the requirements of 40 CFR 96, subpart H; or~~

~~B) If the monitoring requirements of 40 CFR 96, subpart H, are demonstrated by the source to be technically infeasible as applied to a budget unit subject to the requirements of this Subpart, the owner or operator of such budget unit may monitor by an alternative monitoring procedure for the budget unit approved by the Agency and the Administrator of USEPA pursuant to the provisions of 40 CFR 75, subpart E. Such alternative monitoring procedures must be contained as federally enforceable conditions in the unit's permit.~~

~~4) The compliance of each budget unit subject to the requirements of subsection (c)(3)(B) of this Section shall be determined by the emissions measurements recorded and reported in accordance with the federally enforceable conditions in the budget unit's permit addressing monitoring as required by subsection (c)(3)(B) of this Section.~~

~~d) Allowance requirements:~~

~~1) As of November 30 of each year, the allowance transfer deadline, the account representative of each source subject to the requirements of this Subpart must hold allowances available for compliance deductions under 40 CFR 96.54 for each budget unit at the source subject to this Subpart in the budget unit's compliance accounts, or the source's overdraft account. The number of allowances held in these accounts shall not be less than the total NO_x emissions for the control period (rounded to the nearest whole ton), as determined in accordance with subsection (e) of this Section, plus any number of allowances necessary to account for actual utilization (e.g., for testing, start up, malfunction, and shut down) under 40 CFR 96.42(e) for all budget units at the source subject to this Subpart. Compliance with this provision shall be demonstrated if, as of the allowance transfer deadline, the sum of the allowances available for compliance deductions for all budget units at the source subject to this Subpart is equal to or greater than the total NO_x emissions (rounded to the nearest whole ton) from all budget units at the source subject to this Subpart.~~

~~2) Allowances shall be held in, deducted from, or transferred among allowance accounts in accordance with this Subpart and 40 CFR 96, subparts F and G.~~

- 3) ~~Each ton of NO_x emitted by a source with one or more budget units subject to this Subpart in any control period in excess of the NO_x allowances held by the owner or operator for each budget unit at the source subject to this Subpart for each control period shall constitute a separate violation of this Subpart and the Act.~~
 - 4) ~~In order to comply with the requirements of subsection (d)(1) of this Section, an allowance may not be utilized for a control period in a year prior to the year for which the allowance was allocated.~~
 - 5) ~~An allowance allocated by the Agency or USEPA under the NO_x Trading Program is a limited authorization to emit one ton of NO_x. No provision of the NO_x Trading Program, any permit issued or permit application submitted pursuant to this Subpart, or an exemption under 40 CFR 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit this authorization.~~
 - 6) ~~An allowance allocated by the Agency or USEPA under the NO_x Trading Program or pursuant to this Subpart does not constitute a property right.~~
 - 7) ~~Upon recordation by USEPA under 40 CFR 96, subpart F or G, every allocation, transfer, or deduction of an allowance to or from a budget unit's compliance account or to or from the source's general or overdraft account where the budget unit is located is deemed to amend automatically and become a part of any budget permit of the budget unit. This automatic amendment of the budget permit shall occur by operation of law and will not require any further review.~~
- e) ~~Recordkeeping and reporting requirements:~~
- 1) ~~Unless otherwise provided, the owner or operator of a source subject to the requirements of this Subpart must keep at the source each of the documents listed in subsections (e)(1)(A) through (e)(1)(D) of this Section for a period of 5 years from the date the document is created. This period may be extended for cause at any time prior to the end of 5 years in writing by the Agency or USEPA.~~
 - A) ~~The account certificate of representation for the account representative for the source and each budget unit at the source subject to the requirements of this Subpart and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 40 CFR 96.13, provided that the certificate and such supporting documents must be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the account representative.~~
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- ~~B) All emissions monitoring information, in accordance with subsection (c) of this Section, provided that to the extent that 40 CFR 96, subpart H, provides for a three-year period for recordkeeping, the three-year period shall apply.~~
- ~~C) Copies of all reports, compliance certifications, and other submissions and all records made or required under this Subpart or the NO_x Trading Program or documents necessary to demonstrate compliance with the requirements of this Subpart or the NO_x Trading Program.~~
- ~~D) Copies of all documents used to complete a budget permit application and any other submission under this Subpart or under the NO_x Trading Program.~~
- ~~2) The account representative of a source and each budget unit at the source subject to the requirements of this Subpart must submit to the Agency and USEPA the reports and compliance certifications required under this Subpart and the NO_x Trading Program, including those under 40 CFR 96, subparts D and H.~~
- ~~f) Liability:~~
- ~~1) No revision of a budget permit shall excuse any violation of the requirements of the NO_x Trading Program or this Subpart that occurs prior to the date that the revision under such budget permit takes effect.~~
- ~~2) Each budget source and each budget unit at the source shall meet the requirements of the NO_x Trading Program.~~
- ~~3) Any provision of this Subpart or the NO_x Trading Program that applies to a source subject to the requirements of this Subpart (including a provision applicable to the account representative of the source) shall also apply to the owner and operator of such source and to the owner and operator of the budget units subject to the requirements of this Subpart at the source.~~
- ~~4) Any provision of this Subpart or the NO_x Trading Program that applies to a budget unit subject to the requirements of this Subpart (including a provision applicable to the account representative of such budget unit) shall also apply to the owner and operator of such budget unit. Except with regard to the requirements applicable to budget units with a common stack under 40 CFR 96, subpart H, the owner and operator and the account representative of one budget unit shall not be liable for any violation by any other budget unit of which they are not an owner or operator or the~~

~~account representative and that is located at a source of which they are not an owner or operator or the account representative.~~

- ~~5) Excess emissions requirements: The account representative of a source that has excess emissions in any control period shall surrender the allowances as required for deduction under 40 CFR 96.54(d)(1).~~
- ~~6) The owner or operator of a budget EGU that has excess emissions in any control period shall pay any fine, penalty, or assessment or comply with any other remedy imposed under 40 CFR 96.54(d)(3) and the Act.~~
- ~~g) Effect on other authorities: No provision of this Subpart, the NO_x Trading Program, a budget permit application, a budget permit, or a retired budget unit exemption under 40 CFR 96.5 shall be construed as exempting or excluding the owner or operator and, to the extent applicable, the account representative of a source or budget unit from compliance with any other regulations promulgated under the CAA, the Act, an approved State implementation plan, or a federally enforceable permit.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.458 Permitting Requirements~~

- ~~a) Budget permit requirements:~~
 - ~~1) The owner or operator of each source with one or more budget units subject to this Subpart is required to timely submit, in accordance with subsection (a)(4), (a)(5), or (a)(6) of this Section, as applicable, a complete permit application addressing all requirements of this Subpart applicable to such budget units.~~
 - ~~2) Each budget permit (including a draft or proposed budget permit, if applicable) shall contain federally enforceable conditions addressing all applicable requirements of the NO_x Trading Program and requirements of this Subpart and shall be a complete and segregable portion of the source's entire permit.~~
 - ~~3) No budget permit will be issued, and no NO_x allowance account will be established for any budget unit subject to this Subpart, until the Agency and USEPA have received a complete account certificate of representation under 40 CFR 96, subpart B, for an account representative of the source and each budget unit at the source subject to this Subpart.~~
 - ~~4) For any budget unit subject to this Subpart that commenced operation before November 1, 2003, and for which a CAAPP permit is not required pursuant to Section 39.5 of the Act, the owner or operator of such budget~~

~~unit must submit a budget permit application meeting the requirements of this Subpart on or before November 1, 2003.~~

- ~~5) For any budget unit subject to this Subpart that commenced operation before August 1, 2003, and for which a CAAPP permit is required pursuant to Section 39.5 of the Act, the owner or operator of such budget unit must submit a budget permit application meeting the requirements of this Subpart on or before August 1, 2003.~~
- ~~6) For any budget unit subject to this Subpart that is subject to Section 39.5 of the Act and that commences operation on or after August 1, 2003, and for any budget unit subject to this Subpart and not subject to Section 39.5 of the Act that commences operation on or after November 1, 2003, the owner or operator of such budget units must submit applications for construction and operating permits pursuant to the requirements of Sections 39 and 39.5 of the Act and 35 Ill. Adm. Code 201 and such applications must specify that they are applying for budget permits, and must address the budget permit application requirements of this Subpart.~~

~~b) Budget permit applications:~~

- ~~1) Duty to apply: The owner or operator of any source with one or more budget units subject to this Subpart must submit to the Agency one or more complete budget permit applications under subsection (b)(2) of this Section for such budget units by the applicable deadline in subsection (a)(4), (a)(5), or (a)(6) of this Section. The owner or operator of any source with such budget units must reapply for a budget permit as required by this Subpart, and 35 Ill. Adm. Code 201 and Sections 39 and 39.5 of the Act.~~
 - ~~2) Information requirements for budget permit applications: A complete budget permit application must include the following elements concerning the budget units for which the application is submitted:
 - ~~A) Identification of the source, including plant name. The ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration must also be included, if applicable;~~
 - ~~B) Identification of each fossil fuel-fired combustion turbine, stationary boiler or combined cycle system budget unit at the source;~~
 - ~~C) An explanation why each budget unit is subject to the requirements of Section 217.454 of this Subpart; and~~~~
-

~~D) The compliance requirements of Section 217.456 of this Subpart.~~

- ~~3) Federally enforceable status of budget permit: An application for a budget permit shall be treated as a modification of the source's existing federally enforceable permit, if such permit has been issued for the source, and shall be subject to the same procedural requirements as the original application. When the Agency issues a budget permit, it shall be incorporated into and become a segregable part of the source's existing federally enforceable permit.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.460 Subpart U NO_x Trading Budget~~

- ~~a) The initial NO_x allowances available for allocation for each control period (the Subpart U NO_x Trading Budget) for budget units subject to the provisions of this Subpart shall be 4,882 tons per control period, subject to adjustment in accordance with subsections (b), (c) and (d) of this Section, and subject to the new source set aside for budget units subject to this Subpart, as set forth in Sections 217.462 and 217.464 of this Subpart. The Subpart U NO_x Trading Budget shall be initially allocated as set forth in Appendix E of this Part.~~
- ~~b) The Agency may adjust the Subpart U NO_x Trading Budget available for allocations in subsection (a) of this Section by adding allowances for budget units subject to this Subpart opting to become subject to this Subpart pursuant to the requirements for opt-in units in Sections 217.474 and 217.476 of this Subpart.~~
- ~~e) The Agency shall adjust the Subpart U NO_x Trading Budget available for allocations in subsection (a) of this Section to remove allowances from units opting to become exempt pursuant to the requirements for low emitters in Sections 217.454(e) and 217.472 of this Subpart.~~
- ~~d) Except as set forth in subsection (e) of this Section, if USEPA adjusts the base Subpart U NO_x Trading Budget of 4,882 allowances, the Agency will adjust the Subpart U NO_x Trading Budget pro-rata.~~
- ~~e) If USEPA adjusts the Subpart U NO_x Trading Budget as to any individual budget unit, the Subpart U NO_x Trading Budget shall not be adjusted pro-rata, and only the allowance allocation for that budget unit will be adjusted.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.462 Methodology for Obtaining NO_x Allocations~~

- a) ~~Appendix E of this Part identifies the sources with existing budget units subject to this subpart and the number of NO_x allowance allocations that each such budget unit is eligible to receive each control period, subject to adjustment in accordance with Section 217.460 of this subpart and for transfers made in accordance with subsection (b) of this section. Each named budget unit's allocation will be adjusted proportionally based on the adjusted Subpart U NO_x Trading Budget as provided by Section 217.460 of this Subpart.~~
- b) ~~The owner or operator of budget units subject to this Subpart may permanently transfer all or part of their allocation of allowances pursuant to Column 5 of Appendix E of this part, subject to adjustment in accordance with this Subpart, to another budget unit subject to this Subpart, or to a budget unit subject to Subpart W of this Part. Such transfer will be effective by submitting a written request to the Agency that is signed by the account representative for the transferring budget unit and containing the account number for the recipient budget unit. The owner or operator of budget units subject to this Subpart may not permanently transfer all or part of the new source set aside indicated as the difference between Column 4 and Column 5 of Appendix E of this Part.~~
- c) ~~Subject to adjustment in accordance with this Subpart, or revocation or revision of the federal NO_x Trading Program or this Subpart, allocations pursuant to Appendix E of this Part exist for the life of the program, including all or a portion of any allocation transferred to another budget unit pursuant to the provisions of this Subpart.~~

(Source: ~~Added at 25 Ill. Reg. 5914, effective April 17, 2001~~)

~~Section 217.464 Methodology for Determining NO_x Allowances from the New Source Set Aside~~

- a) ~~The methodology for calculating the allowances available to be allocated to new budget units subject to this Subpart from the new source set aside is based on the more stringent emission rate of 0.15 lbs/mmBtu or the permitted NO_x emission rate, but not less than 0.055 lbs/mmBtu.~~
- b) ~~The general equation for determining allowances is:~~

$$A = \frac{HI \times ER}{2000}$$

~~Where HI = heat input (in mmBtu/control period) as determined in accordance with subsection (c) of this Section.~~

~~Where ER = The NO_x emission rate in lbs/mmBtu as determined in accordance with subsection (a) of this Section.~~

Where A = allowances of NO_x /control period.

- e) ~~The projected heat input shall be determined as set forth below, divided by 2000 lbs/ton:~~
- 1) ~~For "new" budget units subject to this Subpart that have seasonal heat input from at least 3 control periods prior to the allocation year, the average of the budget unit's 2 highest seasonal heat inputs from the control periods 1 to 3 years prior to the allocation year;~~
 - 2) ~~For "new" budget units subject to this Subpart that have seasonal heat input from only 2 control periods prior to the allocation year, the average of the budget unit's seasonal heat inputs from the control periods 1 and 2 years prior to the allocation year;~~
 - 3) ~~For "new" budget units subject to this Subpart that have seasonal heat input from only the control period prior to the allocation year, the heat input from that control period; or~~
 - 4) ~~For "new" budget units subject to this Subpart that have not operated for at least 77 days of the control period prior to the allocation year, the budget unit's maximum design heat input for the control period as designated in the construction permit.~~

(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)

Section 217.466— NO_x Allocations Procedure for Subpart U Budget Units

For each control period, the Agency will allocate the total number of NO_x allowances in the Subpart U NO_x Trading Budget apportioned to budget units under Section 217.460 of this Subpart, subject to adjustment as provided in this Subpart. These allocations will be issued as provided in subsections (a) and (b) of this Section, as follows:

- a) ~~The Agency will allocate to each budget unit that is listed in Appendix E of this Part the number of allowances listed in Column 5 of Appendix E of this Part for that budget unit for each 3-year period of the program. The Agency will report these allocations to USEPA by March 1 of 2004, and triennially thereafter.~~
- b) ~~The Agency will allocate allowances from the new source set aside to "new" budget units as set forth in Section 217.468 of this Subpart.~~
- e) ~~The Agency will report allocations from the new source set aside to USEPA by April 1 of each year for the following year.~~
- d) ~~To the extent that allowances remain in the new source set aside after any allocation pursuant to subsection (b) of this Section, the Agency shall allocate any~~

~~such remaining allowances pro rata to the owner or operator of the budget units listed in Appendix E of this Part to the extent a whole allowance may be allocated to any such owner or operator. The Agency will make such allocation by April 15 of each year. If there are insufficient allowances to allocate a whole allowance to any such owner or operator of a budget unit listed in Appendix E of this Part, such allowances shall be retained by the Agency in the new source set aside. Any such allowances retained in the new source set aside shall be accumulated in the new source set aside and may either:~~

- ~~1) Be available for allocation to new budget units for future control periods, subject to the provisions of Section 217.468 of this Subpart; or~~
- ~~2) If, after any annual allocation to new budget units, there are sufficient allowances accumulated in the new source set aside to allocate one or more whole allowances to the owner or operator of existing budget units listed in Appendix E of this Part on a pro rata basis, such accumulated whole allowances shall be allocated pro rata to such owner or operators.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.468 New Source Set Asides for "New" Budget Units~~

- ~~a) For the 2004, 2005 and 2006 control periods, a "new" budget unit is one that commenced commercial operation on or after January 1, 2000. For the 2007 and later control periods, a "new" budget unit is one that commenced commercial operation no more than 3 control periods prior to the year the allocation is requested pursuant to this Section. Those units that commenced commercial operation on or after January 1, 2000, but before May 31, 2004, become "existing" budget units on October 1, 2004. Those units that commenced commercial operation on or after May 31, 2004, become "existing" budget units the end of the third control period after they commenced commercial operation.~~
- ~~b) "New" budget units must have an allowance for every ton of NO_x emitted during the control period as provided in Section 217.456(d) of this Subpart.~~
- ~~e) The Agency will establish a new source set aside for each control period from which "new" budget units may purchase NO_x allowances. Each new source set aside will be allocated allowances equal to 3% of each source's initial total Subpart U NO_x Trading Budget allocation as reflected in Column 5 of Appendix E of this Part, which is 146 allowances, for each control period. The allocation for the new source set aside from each source shall be based on 3% of the source's initial allocation, without regard to subsequent adjustment to any such source's current allocation, including permanent transfer of allowances to another source or revision of the Subpart U NO_x Trading Budget by USEPA.~~

- ~~d) A "new" budget unit may request to purchase from the Agency a number of allowances that is not more than the number of allowances for which it is eligible, as determined in Section 217.464 of this Subpart, and subject to the provisions of this Section.~~
- ~~e) The account representative of a "new" budget unit under subsection (a) of this Section may purchase allowances from the new source set aside by submitting to the Agency a request, in writing or in a format specified by the Agency, to be allocated allowances for the current control period from the new source set aside. The allocation request for each applicable control period must be submitted after the date on which the Agency issues a construction permit to the "new" budget unit and before February 1 of the control period for which the allocation is requested.~~
- ~~f) The Agency will notify the account representative by March 1 of the applicable year of the number of allowances that are eligible for purchase for the "new" budget unit pursuant to the requirements of this Section. If the Agency does not receive payment by March 15 of the applicable year, the account representative will forfeit his/her eligibility to purchase the allowances offered. The Agency will make available for purchase those forfeited allowances on a pro-rata basis to "new" budget units requesting allocations pursuant to this Section, up to the number of allowances requested by each account representative. Such additional allocations are subject to the purchase requirements of subsection (g) of this Section.~~
- ~~g) The price of allowances from the new source set aside shall be:~~
- ~~1) For 2004 only, the price shall be the average price at which NO_x allowances were traded in 2003 in the Ozone Transport Region; and~~
 - ~~2) For all years other than 2004, the average price at which NO_x allowances were traded in the interstate NO_x Trading Program for the preceding control period.~~
- ~~h) The fees collected by the Agency from the sale of allowances will be distributed pro-rata to budget units receiving allowances pursuant to Appendix E of this Part on the basis of allocated allowances, subject to Agency administrative costs assessed pursuant to Section 9.9 of the Act.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.470 Early Reduction Credits (ERCs) for Budget Units~~

~~If a budget unit reduces its NO_x emission rate as required by the applicable provisions of subsection (e) of this Section in the 2001 or 2002 control period, or if approved by USEPA the 2003 control period, for use in 2004 control period, or later control periods authorized by~~

USEPA, the account representative may request early reduction credits (ERCs) for such reductions, and the Agency will allocate ERCs to the budget unit in accordance with the following:

- a) Each budget unit for which the account representative requests any ERCs under subsection (d) of this Section must monitor NO_x emissions in accordance with 40 CFR 96, subpart H, as incorporated by reference in Section 217.104 of this Part, starting with the control period prior to the control period for which ERCs will first be requested and for each control period for which ERCs will be requested. For example, if ERCs are requested for reductions made in the 2001 control period, the budget unit must have implemented the applicable monitoring for the 2000 control period. The budget unit's monitoring system availability must be at least 90% during the control period prior to the control period in which the NO_x emissions reduction is made and the budget unit must be in compliance with any applicable State or federal emissions or emissions related requirements.
- b) The NO_x emission rate and heat input under subsections (e) through (e) of this Section shall be determined in accordance with 40 CFR 96, subpart H.
- c) Each budget unit for which ERCs are requested under subsection (d) of this Section must have reduced its NO_x emission rate for each control period for which ERCs are requested by 30% or more below the actual NO_x emissions rate (lbs/mmBtu) for the first control period in which ERC's are requested.
- d) The account representative of a budget unit that meets the requirements of subsections (a) through (c) of this Section may submit to the Agency a request for ERCs for the budget unit based on NO_x emission rate reductions made by the budget unit in control periods 2001, 2002 and 2003.
 - 1) The number of ERCs that may be requested for any applicable control period shall be an amount equal to the budget unit's heat input for such control period multiplied by the difference between the budget unit's NO_x emission rate (meeting the requirements of subsection (c) of this Section for the applicable control period) and the budget unit's actual NO_x emission rate for the applicable control period, divided by 2000 lbs/ton, and rounded to the nearest ton;
 - 2) Upon request of the account representative, the ERC allowance allocation for a particular budget unit may be deposited in the source's overdraft account rather than in the budget unit's compliance account; and
 - 3) The early reduction request must be submitted by November 1 for reductions made in the previous control period, in a format specified by the Agency.

- e) ~~In the event that the May 31, 2004 date for implementing the NO_x SIP Call is delayed, the early reduction request must be submitted in accordance with any rulemaking or guidance by USEPA on the distribution of the Compliance Supplement Pool under the NO_x SIP Call, 63 Fed. Reg. 57356 (October 27, 1998).~~
- f) ~~The Agency will allocate ERCs to the budget units meeting the requirements of subsections (a) through (e) of this Section and covered by ERC requests meeting the requirements of subsection (d) of this Section in accordance with the following procedures:~~
- 1) ~~The Agency shall allocate no more than 2,427 ERCs over three years, as follows:~~
 - A) ~~Not more than one-half of the total ERC allowances for reductions made in the control period in 2001;~~
 - B) ~~Not less than one-half of the total ERC allowances for reductions made in the control period in 2002; and~~
 - C) ~~If approved by USEPA, any ERC allowances not allocated pursuant to subsection (f)(1)(A) or (B) of this Section, for reductions made in the control period in 2003.~~
 - 2) ~~If the number of ERC allowances requested for a reduction achieved in any control period is less than or equal to the number of ERC allowances designated for that control period in subsection (f)(1) of this Section, the Agency will allocate one allowance for each accepted ERC request; and~~
 - 3) ~~If the number of ERC allowances requested for a reduction achieved in any control period is greater than the number of ERC allowances designated for that control period in subsection (f)(1) of this Section, the Agency will allocate allowances for accepted requests on a pro-rata basis.~~
- g) ~~By April 1, the Agency will notify the account representative submitting an ERC request for the subsequent control period of the number of ERC allowances that will be allocated to each budget unit for that control period.~~
- h) ~~By May 1, 2004, the Agency will submit to USEPA the ERC allocations made by the Agency under this Section. USEPA will record such allocations to the extent that they are consistent with the requirements of this Section.~~
- i) ~~ERC allowances recorded under subsection (h) of this Section may be deducted under 40 CFR 96.54, as incorporated by reference in Section 217.104 of this Part, for the control period in 2004 or such control periods as may be specified by USEPA. Notwithstanding 40 CFR 96.55(a), USEPA will deduct as retired any ERC allowances that are not deducted for compliance in accordance with 40 CFR~~

~~96.54 for the control period in 2004 or such control periods as may be specified by USEPA.~~

- ~~j) ERC allowances are treated as banked allowances in 2004 for the purposes of 40 CFR 96.55(a) and (b).~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.472 Low Emitter Requirements~~

~~Starting with the effective date of the permit referred to in Section 217.454(e), the budget unit electing low emitter status shall be subject only to the requirements of this Section.~~

- ~~a) For each control period the owner or operator elects low emitter status, the federally enforceable permit conditions must:~~
- ~~1) Restrict the unit to burning only natural gas, fuel oil, or natural gas and fuel oil;~~
 - ~~2) Limit the unit's potential NO_x mass emissions for the control period to 25 tons or less;~~
 - ~~3) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NO_x mass emissions by the unit's maximum potential hourly NO_x mass emissions;~~
 - ~~4) Require that the unit's potential NO_x mass emissions shall be calculated by using the monitoring provisions of 40 CFR 75, or if the unit does not rely on these monitoring provisions, as follows:~~
 - ~~A) Select the applicable default NO_x emission rate:
0.7 lbs/mmBtu for combustion turbines burning natural gas exclusively during the control period; 1.2 lbs/mmBtu for combustion turbines burning any fuel oil during the control period; 1.5 lbs/mmBtu for boilers burning natural gas exclusively during the control period; or 2 lbs/mmBtu for boilers burning any fuel oil during the control period.~~
 - ~~B) Multiply the default NO_x emission rate under subsection (a)(4)(A) of this Section by the unit's maximum rated hourly heat input which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input. The owner or operator of the unit may request in the permit application required by this subsection that the Agency use a lower value for the unit's maximum rated hourly heat input. The Agency may approve such~~

~~lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative. The owner or operator must demonstrate that such lower value is representative of the unit's current capabilities because modifications have been made to the unit that permanently limit the unit's capacity;~~

- ~~5) Require that for 5 years at the source that includes the unit, records demonstrating that the operating hours restriction, the fuel use restriction and the other requirements of the permit related to these restrictions were met; and~~
 - ~~6) Require that the owner or operator of the unit report to the Agency for each control period the unit's hours of operation (treating any partial hour of operation as a whole hour of operation), heat input and fuel use by type. This report shall be submitted by November 1 of each year the unit elects low emitter status.~~
- ~~b) The Agency will notify the USEPA in writing of each unit electing low emitter status pursuant to the requirements of subsection (a) of this Section and when any of the following occurs:~~
- ~~1) The permit with federally enforceable conditions that includes the restrictions in subsection (a) of this Section is issued by the Agency;~~
 - ~~2) Such permit is revised to remove any such restriction;~~
 - ~~3) Such permit includes any such restriction that is no longer applicable; or~~
 - ~~4) The unit does not comply with any such restriction.~~
- ~~e) The unit shall become subject to the requirements of this Subpart if, for any control period under this Section, the fuel use restriction or the operating hours restriction under subsection (a) of this Section is removed from the unit's permit or otherwise is no longer applicable, or the unit does not comply with the fuel use restriction or the operating hours restriction under subsection (a) of this Section. Such unit shall be treated as commencing operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.~~
- ~~d) The owner or operator of a unit to which the Agency has ever allocated allowances under Appendix E of this Part may elect low emitter status. In that case, the Agency will reduce the Subpart U NO_x budget by the number of allowances equal to the amount of NO_x emissions the unit is permitted to emit~~

~~during the control period, pursuant to a federally enforceable condition in the unit's permit. The owner or operator of a unit electing low emitter status may demonstrate that it holds sufficient allowances to cover the unit's NO_x emissions by offsetting the emissions from such unit, not to exceed its permitted emission limit as included in its federally enforceable permit, with allowances issued for voluntary NO_x reductions meeting the requirements of Subpart X of this Part. The Agency will not reduce the Subpart U NO_x budget by the allowances issued for NO_x reductions obtained in accordance with Subpart X of this Part.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.474 — Opt-In Units~~

- ~~a) — Any operating fossil fuel fired stationary boiler, combustion turbine, combined cycle system, cement kiln or stationary internal combustion engine in the State may qualify under this Subpart to become an opt-in budget unit if it:~~
- ~~1) — Is not a budget EGU under Subpart W of this Part;~~
 - ~~2) — Vents all of its emissions to a stack;~~
 - ~~3) — Has documented heat input for more than 876 hours in the six months immediately preceding the submission of an application for an initial budget permit under subsection (d) of this Section;~~
 - ~~4) — Is not covered by a retired unit exemption under 40 CFR 96.5; and~~
 - ~~5) — Is not covered by the low emitter exemption under Section 217.454(c) of this Subpart.~~
- ~~b) — Except as otherwise provided in this Subpart, an opt in budget unit shall be treated as a budget unit for purposes of applying this Subpart and 40 CFR 96.~~
- ~~c) — Authorized Account Representative:~~
- ~~1) — If an opt in unit is located at the same source as one or more budget units, it shall have the same account representative as these budget units.~~
 - ~~2) — If the opt in unit is not located at the same source as one or more budget units, the owner or operator of the opt in unit shall submit a complete account certificate of representation under 40 CFR 96.12.~~
- ~~d) — To apply for a budget permit, the account representative of a unit meeting the qualifications of subsection (a) of this Section must, except as provided under Section 217.478(f) of this Subpart, submit to the Agency:~~

- 1) ~~A budget permit application for the unit that:

 - A) ~~Meets the requirements under Section 217.458 of this Subpart; and~~
 - B) ~~Contains provisions for a change in the regulatory status of the unit to an opt-in budget unit under Section 217.454 of this Subpart pursuant to the provisions of Section 217.480(b) of this Subpart.~~~~
- 2) ~~A monitoring plan for the unit in accordance with 40 CFR 96, subpart H.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.476 — Opt-In Process~~

~~The Agency will issue or deny a budget permit for an opt-in unit in accordance with Section 217.458 of this Subpart and the following:~~

- a) ~~The Agency will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a budget permit for an opt-in unit. A monitoring plan is sufficient, for purposes of interim review, if the plan contains information demonstrating that the NO_x emission rate and heat input of the unit are monitored and reported in accordance with 40 CFR 96, subpart H. A determination of sufficiency shall not be construed as acceptance or approval of that unit's monitoring plan.~~
- b) ~~If the Agency determines that the unit's monitoring plan is sufficient under subsection (a) of this Section and after completion of the monitoring system certification under 40 CFR 96, subpart H, the NO_x emission rate and the heat input of the unit shall be monitored and reported in accordance with 40 CFR 96, subpart H, for one full control period during which the monitoring system availability is not less than 90% and during which the unit is in full compliance with any applicable State or federal emissions or emissions-related requirements.~~
- c) ~~Based on the information monitored and reported under subsection (b) of this Section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmbtu) for the control period, and the unit's baseline NO_x emission rate shall be calculated as the unit's total NO_x emissions (in lbs) for the control period divided by the unit's baseline heat rate.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.478 — Opt-In Budget Units: Withdrawal from the NO_x Trading Program~~

- a) ~~Requesting withdrawal: To withdraw from the NO_x Trading Program, the account representative of an opt-in budget unit shall submit to the Agency a~~

~~request to withdraw from the NO_x Trading Program and to withdraw the budget permit effective as of a specified date between (and not including) September 30 and May 1. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.~~

- ~~b) — Conditions for withdrawal: Before an opt-in budget unit may withdraw from the NO_x Trading Program and the budget permit may be withdrawn under this Section, the following conditions must be met:~~
- ~~1) — For the control period immediately before the withdrawal is to be effective, the account representative must submit to the Agency an annual compliance certification report in accordance with 40 CFR 96.30.~~
 - ~~2) — If the opt-in budget unit has excess emissions for the control period immediately before the withdrawal is to be effective, USEPA has deducted from the opt-in budget unit's compliance account, or the overdraft account of the NO_x budget source where the opt-in budget unit is located, the number of allowances required in accordance with 40 CFR 96.54(d) for the control period.~~
 - ~~3) — After the requirements for withdrawal under subsections (b)(1) and (2) of this Section are met, USEPA will deduct from the opt-in unit's compliance account, or the overdraft account of the budget source where the opt-in budget unit is located, allowances equal in number to any allowances allocated to that unit under Section 217.782 of this Subpart for the control period for which the withdrawal is to be effective and earlier control periods. USEPA will close the opt-in budget unit's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the opt-in unit. The account representative for the opt-in budget unit shall become the account representative for the general account.~~
- ~~c) — An opt-in budget unit that withdraws from the Subpart U NO_x Trading Program shall comply with all requirements under the NO_x Trading Program concerning all years for which such opt-in budget unit was an opt-in budget unit, even if such requirements arise or must be complied with after the withdrawal takes effect.~~
- ~~d) — Notification:~~
- ~~1) — After the requirements for withdrawal under subsections (a) and (b) of this Section are met (including deduction of the full amount of allowances required), the Agency will revise the budget permit indicating a specified effective date for the withdrawal that is after the requirements in subsections (a) and (b) of this Section have been met and that is prior to May 1 or after September 30.~~
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- ~~2) If the requirements for withdrawal under subsections (a) and (b) of this Section are not met, the Agency will issue a notification to the owner or operator and the account representative of the opt-in budget unit that the opt-in unit's request to withdraw its budget permit is denied. If the opt-in budget unit's request to withdraw is denied, the opt-in budget unit shall remain subject to the requirements for an opt-in budget unit.~~
- ~~e) Reapplication upon failure to meet conditions of withdrawal: If the Agency denies the opt-in budget unit's request to withdraw, the account representative of the opt-in budget unit may submit another request to withdraw in accordance with subsections (a) and (b) of this Section.~~
- ~~f) Ability to return to the NO_x Trading Program: Once an opt-in unit withdraws from the NO_x Trading Program and its budget permit is withdrawn under this Section, the account representative may not submit another application for a budget permit under Section 217.474(d) of this Subpart for the unit prior to the date that is four years after the date on which the budget permit with opt-in conditions is withdrawn.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.480 Opt In Units: Change in Regulatory Status~~

- ~~a) Notification: When an opt-in unit becomes an opt-in budget unit under Section 217.476 of this Subpart, the owner or operator shall notify the Agency and USEPA in writing of such change in the opt-in unit's regulatory status within 30 days of such change.~~
- ~~b) Any permit application that provides for a change in the regulatory status of a unit to an opt-in budget unit pursuant to Section 217.474(d)(1)(B) of this Subpart and included in a budget permit, is effective on the date on which such opt-in unit becomes an opt-in budget unit under Section 217.454 of this Subpart.~~
- ~~e) USEPA's action:~~
- ~~1) USEPA will deduct from the compliance account for the opt-in budget unit under this Section, or the overdraft account of the budget source where the opt-in budget unit is located, allowances equal in number to and allocated for the same or a prior control period as:~~
- ~~A) Any allowances allocated to the budget unit (as an opt-in unit) under Section 217.482 of this Subpart for any control period after the last control period during which the unit's budget permit was effective; and~~
-

- ~~B) If the effective date of any budget permit under subsection (b) of this Section is during a control period, the allowances allocated to the opt in budget unit (as an opt in unit) under Section 217.482 of this Subpart for the control period multiplied by the ratio of the number of days in the control period, starting with the effective date of the budget permit under subsection (b) of this Section, divided by the total number of days in the control period.~~
- ~~2) The account representative shall ensure that the compliance account of the opt in budget unit under subsection (b) of this Section, or the overdraft account of the budget source where the opt in budget unit is located, contains the allowances necessary for completion of the deduction under subsection (c)(1) of this Section. If the compliance account or overdraft account does not contain sufficient allowances, USEPA will deduct the required number of allowances, regardless of the control period for which they were allocated, whenever allowances are recorded in either account.~~
- ~~3) For every control period during which any budget permit under subsection (b) of this Section is effective, the opt in budget unit under subsection (b) of this Section will be treated, solely for purposes of allowance allocations under Section 217.466 or 217.468 of this Subpart, as a unit that commenced operation on the effective date of the budget permit under subsection (b) of this Section and will be allocated allowances in accordance with Section 217.466 or 217.468 of this Subpart.~~
- ~~4) Notwithstanding subsection (c)(2) of this Section, if the effective date of any budget permit under subsection (b) of this Section is during a control period, the following number of allowances will be allocated to the opt in budget unit for the control period: the number of allowances otherwise allocated to the opt in budget unit under Section 217.466 or 217.468 of this Subpart for the control period multiplied by the ratio of the number of days in the control period, starting with the effective date of the budget permit under subsection (b) of this Section, divided by the total number of days in the control period.~~
- ~~d) When the owner or operator of an opt in unit does not renew the budget permit for the opt in budget unit issued pursuant to Section 217.474(d), USEPA will deduct from the opt in budget unit's compliance account, or the overdraft account of the budget source where the opt in budget unit is located, allowances equal in number to and allocated for the same or a prior control period as any allowances allocated to the opt in budget unit under Section 217.482 of this Subpart for any control period after the last control period for which the budget permit is effective. The account representative shall ensure that the opt in budget unit's compliance account or the overdraft account of the budget source where the opt in budget unit is located contains the allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain~~
-

~~sufficient allowances, USEPA will deduct the required number of allowances, regardless of the control period for which they were allocated, whenever allowances are recorded in either account.~~

- ~~e) After the deduction under subsection (d) of this Section is completed, USEPA will close the opt-in unit's compliance account. If any allowances remain in the compliance account after completion of such deduction and any deduction under 40 CFR 96.54, USEPA will close the opt-in unit's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owner or operator of the opt-in unit. The account representative for the opt-in unit shall become the account representative for the general account.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

~~Section 217.482 Allowance Allocations to Opt-In Budget Units~~

- ~~a) Allowance allocations:~~

- ~~1) By the December 31 immediately before the first control period for which the budget permit is effective, the Agency will allocate allowances to the opt-in budget unit and submit to USEPA the allocation for the control period in accordance with subsection (b) of this Section.~~
- ~~2) By no later than the December 31 after the first control period for which the budget permit is in effect and December 31 of each year thereafter, the Agency will allocate allowances to the opt-in budget unit and submit to USEPA allocations for the next control period, in accordance with subsection (b) of this Section.~~

- ~~b) For the first control period, and for each subsequent control period for which the opt-in budget unit has a budget permit, the opt-in budget unit will be allocated allowances in accordance with the following procedures:~~

- ~~1) The heat input (in mmbtu) used for calculating allowance allocations will be the lesser of:~~
- ~~A) The opt-in unit's baseline heat input determined pursuant to Section 217.476(e) of this Subpart; or~~
- ~~B) The opt-in unit's heat input, for the control period in the year prior to the year of the first control period for which the allocations are being calculated, as determined in accordance with 40 CFR 96, subpart H.~~

- ~~2) The Agency will allocate allowances to the opt-in budget unit in an amount equaling the heat input (in mmbtu) determined under subsection (b)(1) of this Section multiplied by the lesser of:~~
- ~~A) The unit's baseline NO_x emission rate (in lbs/mmbtu) determined pursuant to Section 217.476(e) of this Subpart; or~~
 - ~~B) The lowest NO_x emissions limitation (calculated in lbs/mmbtu) under State or federal law that is applicable to the budget opt-in unit for the year of the control period for which the allocations are being calculated, regardless of the averaging period to which the emissions limitation applies.~~

~~(Source: Added at 25 Ill. Reg. 5914, effective April 17, 2001)~~

SUBPART U: CAIR NO_x OZONE SEASON TRADING PROGRAM FOR
SPECIFIED NO_x GENERATING UNITS

Section 217.450 Purpose

The purpose of this Subpart U is to control the seasonal emissions of nitrogen oxides (NO_x) from non-EGUs by determining allocations and implementing only the trading provisions of the CAIR NO_x Ozone Season Trading Program.

(Source: Added at _____, effective _____)

Section 217.452 Definitions

The following definitions apply for the purposes of this Subpart. Unless otherwise defined in this Section or a different meaning for a term is clear from its context, the terms used in this Subpart have the meanings specified in 35 Ill. Adm. Code 201 and 211.

"Agency" means the Illinois Environmental Protection Agency. [415 ILCS 5/3.105]

"Budget permit" means a permit issued by the Agency pursuant to the NO_x Trading Program that contains federally enforceable conditions.

"Budget unit" means any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr that meets the criteria in Section 217.454(a) of this Subpart.

"Board" means the Illinois Pollution Control Board. [415 ILCS 5/3.130]

"CAIR designated representative" means, for a CAIR NO_x Ozone Season source and each budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with 40 CFR 96, subparts BBBB and FFFF as applicable, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program, as applicable. For any unit that is subject to one or more of the following programs: CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, CAIR NO_x Ozone Season Trading Program, or the federal Acid Rain Program, the designated representative for the unit must be the same natural person for all programs applicable to the unit.

"CAIR NO_x Ozone Season Trading Budget" means the total CAIR NO_x Ozone Season allowances issued to the Agency by the United States Environmental Protection Agency for allocation to CAIR NO_x Ozone Season sources.

"Compliance account" means for the purposes this Subpart, a CAIR NO_x Allowance Tracking System account, established by USEPA for a CAIR NO_x Ozone Season source pursuant to 40 CFR 96, subpart FFFF in which any CAIR NO_x Ozone Season allowance

allocations for the CAIR NO_x Ozone Season units at the source are initially recorded and in which are held any CAIR NO_x Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_x Ozone Season emissions limitations in accordance with Sections 217.456, and 40 CFR 96.354, as incorporated by reference in Section 217.104.

"NO_x Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with 40 CFR Part 96 and pursuant to 40 CFR, 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides to fulfill the requirements of the NO_x SIP Call.

(Source: Added at _____, effective _____)

Section 217.454 Applicability

- a) This Subpart applies to any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr and that is:
- 1) A unit listed in Appendix E of this Part, irrespective of any subsequent changes in ownership, unit designation, or name of the unit; or
 - 2) A unit not listed in Appendix E of this Part that:
 - A) At no time serves a generator producing electricity for sale;
 - B) At any time serves a generator producing electricity for sale, if such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is smaller than this calculated number, the unit is subject to the provisions of this Subpart; or
 - C) Is part of any source, as that term is defined in 35 Ill. Adm. Code Section 211.6130, listed in Appendix E of this Part.
- b) Those units that meet the above criteria and are subject to the CAIR NO_x Ozone Season Trading Program emissions limitations contained in this Subpart are budget units.

- c) Low-emitter status: Notwithstanding subsection (a) of this Section, the owner or operator of a budget unit subject to the requirements of subsection (a) of this Section may elect low-emitter status by obtaining a permit with federally enforceable conditions that meet the requirements of Section 217.470(a). Starting with the effective date of such permit, the unit shall be subject only to the requirements of Section 217.470.
- d) The owner or operator of any budget unit not listed in Appendix E of this Part but subject to this Subpart shall not receive an allocation of NO_x allowances from the CAIR NO_x Ozone Season Trading Budget, except for any allowance from the new unit set aside (NUSA) in accordance with Section 217.466 of this Subpart. Such unit must acquire NO_x allowances in an amount not less than the NO_x emissions from such budget unit during the control period (rounded to the nearest whole ton) in accordance with the CAIR NO_x Ozone Season Trading Program or pursuant to a permanent transfer of NO_x allocations pursuant to Section 217.464(b) of this Subpart.
- e) This Subpart does not apply to the following boilers used to combust and thereby control CO emissions from the fluidized catalytic cracking unit (FCCU), specifically the Boiler 112B-2 at the refinery located at Lemont, Illinois; Boilers 14-B-3 and 14-B-4 at the refinery located in Channahon/Joliet, Illinois; the waste heat boiler 60F-1 at the refinery located in Robinson, Illinois; and CO Heaters/Boilers CCU No. 1 and CCU No. 2 at the refinery located in Roxana, Illinois.

(Source: Added at _____, effective _____)

Section 217.456 Compliance Requirements

- a) The designated representative of a budget unit must comply with the requirements of the CAIR NO_x Ozone Season Trading Program for Illinois as set forth in this Subpart U and 40 CFR 96, subpart AAAA (CAIR NO_x Ozone Season Trading Program General Provisions) (excluding 40 CFR 96.304, 96.305(b)(2), and 96.306); 40 CFR 96, subpart BBBB (CAIR Designated Representative for CAIR NO_x Ozone Season Sources); 40 CFR 96, subpart FFFF (CAIR NO_x Ozone Season Allowance Tracking System); 40 CFR 96, subpart GGGG (CAIR NO_x Ozone Season Allowance Transfers); and 40 CFR 96, subpart HHHH (Monitoring and Reporting); as incorporated by reference in Section 217.104.
- b) Permit requirements:
- 1) The designated representative of each source with one or more budget units at the source must apply for a permit issued by the Agency with federally enforceable conditions covering the CAIR NO_x Ozone Season

Trading Program ("CAIR permit") that complies with the requirements of Section 217.458 (Permit Requirements).

- 2) The owner or operator of each CAIR NO_x Ozone Season source and each budget unit at the source must operate the budget unit in compliance with its CAIR permit.
- 3) A source with an existing permit (NO_x Budget permit) that was issued pursuant to the NO_x Trading Program shall be deemed in compliance with CAIR permitting requirements until the source's CAAPP permit is modified to include a CAIR permit.

c) Monitoring requirements:

- 1) For budget units subject to the requirements of this Subpart, and which commence operation on and after January 1, 2000, the owner or operator of each CAIR NO_x Ozone Season source and each budget unit at the source must comply with the monitoring, reporting and recordkeeping requirements of 40 CFR 96, subpart HHHH and 40 CFR 75. The CAIR designated representative of each CAIR NO_x Ozone Season source and each budget unit at the source must comply with those sections of the monitoring, reporting and recordkeeping requirements of 40 CFR 96, subpart HHHH, applicable to a CAIR designated representative.
- 2) The compliance of each CAIR NO_x Ozone Season source subject to the requirements of subsection (c)(1) or subsection (c)(3)(A) of this Section with the control period NO_x emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart HHHH.
- 3) For budget units which commenced operation prior to January 1, 2000:
 - A) The owner or operator of each such budget unit at the source must comply with the requirements of 40 CFR 96, subpart HHHH; or
 - B) If the monitoring requirements of 40 CFR 96, subpart HHHH, are demonstrated by the source to be technically infeasible as applied to a budget unit subject to the requirements of this Subpart, the owner or operator of such budget unit may monitor by an alternative monitoring procedure for the budget unit approved by the Agency and the Administrator of USEPA pursuant to the provisions of 40 CFR 75, subpart E. Such alternative monitoring procedures must be contained as federally enforceable conditions in the unit's permit. The compliance of each CAIR NO_x Ozone Season source subject to the requirements of this subsection with

the CAIR NO_x Ozone Season emissions limitation pursuant to subsection (d) of this Section will be determined by the emissions measurements recorded and reported in accordance with the monitoring procedure for the budget unit approved by the Agency and the Administrator of USEPA pursuant to the provisions of 40 CFR 75, subpart E.

d) Emission requirements:

- 1) By the allowance transfer deadline, midnight of November 30, 2009, and by midnight of November 30 of each subsequent year if November 30 is a business day, the owner or operator of each CAIR NO_x Ozone Season source and each budget unit at the source must hold allowances available for compliance deductions pursuant to 40 CFR 96.354(a) in the CAIR NO_x Ozone Season source's compliance account. If November 30 is not a business day, the allowance transfer deadline means by midnight of the first business day thereafter. The number of allowances held may not be less than the tons of NO_x emissions for the control period (rounded to the nearest whole ton) from all budget units at the CAIR NO_x Ozone Season source, as determined in accordance with 40 CFR 96, subpart HHHH. Compliance with this provision shall be demonstrated if, as of the allowance transfer deadline, the sum of the allowances available for compliance deductions for all budget units at the source subject to this Subpart is equal to or greater than the total NO_x emissions (rounded to the nearest whole ton) from all budget units at the source subject to this Subpart.
- 2) Each ton of excess emissions of a CAIR NO_x Ozone Season source for each day in a control period, starting in 2009, will constitute a separate violation of this Subpart U, the Act, and the CAA.
- 3) Each budget unit will be subject to the requirements of subsection (d)(1) of this Section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitoring certification requirements pursuant to 40 CFR 96.370(b)(1), (b)(2) or (b)(3) and for each control period thereafter.
- 4) CAIR NO_x Ozone Season allowances must be held in, deducted from, or transferred into or among allowance accounts in accordance with this Subpart and 40 CFR 96, subparts FFFF and GGGG.
- 5) In order to comply with the requirements of subsection (d)(1) of this Section, a CAIR NO_x Ozone Season allowance may not be deducted for compliance according to subsection (d)(1) of this Section, for a control period in a calendar year before the year for which the CAIR NO_x Ozone

Season allowance is allocated.

- 6) A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of NO_x in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or a retired unit exemption pursuant to 40 CFR 96.305, and no provision of law, will be construed to limit the authority of the United States or the State to terminate or limit this authorization.
 - 7) A CAIR NO_x Ozone Season allowance does not constitute a property right.
 - 8) Upon recordation by USEPA pursuant to 40 CFR 96, subpart FFFF or GGGG, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from a CAIR NO_x Ozone Season source compliance account is deemed to amend automatically, and become a part of, any CAIR permit of the CAIR NO_x Ozone Season source. This automatic amendment of the CAIR permit will be deemed an operation of law and will not require any further review.
- e) Recordkeeping and reporting requirements:
- 1) Unless otherwise provided, the owner or operator of the CAIR NO_x Ozone Season source and each budget unit at the source must keep on site at the source each of the documents listed in subsections (e)(1)(A) through (e)(1)(D) of this Section for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the Agency or USEPA.
 - A) The certificate of representation for the CAIR designated representative for the CAIR NO_x Ozone Season source and each budget unit at the source, all documents that demonstrate the truth of the statements in the certificate of representation, provided that the certificate and documents must be retained on site at the source beyond such five-year period until the documents are superseded because of the submission of a new certificate of representation, pursuant to 40 CFR 96.313, changing the CAIR designated representative.
 - B) All emissions monitoring information, in accordance with Section 217.456(c).
 - C) Copies of all reports, compliance certifications, and other submissions and all records made or required pursuant to the CAIR

NO_x Ozone Season Trading Program or documents necessary to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program or with the requirements of this Subpart U.

D) Copies of all documents used to complete a CAIR permit application and any other submission or documents used to demonstrate compliance pursuant to the CAIR NO_x Ozone Season Trading Program.

2) The CAIR designated representative of a CAIR NO_x Ozone Season source and each budget unit at the source must submit to the Agency and USEPA the reports and compliance certifications required pursuant to the CAIR NO_x Ozone Season Trading Program, including those pursuant to 40 CFR 96, subpart HHHH.

3) For the 2009 control period, CAIR NO_x Ozone Season sources may submit a single report, as referenced in 40 C.F.R. Section 96.374, within the 30 days following the end of the 2009 control period.

f) Liability:

1) No revision of a permit for a budget unit may excuse any violation of the requirements of this Subpart U or the requirements of the CAIR NO_x Ozone Season Trading Program.

2) Each CAIR NO_x Ozone Season source and each budget unit must meet the requirements of the CAIR NO_x Ozone Season Trading Program.

3) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source (including any provision applicable to the CAIR designated representative of a CAIR NO_x Ozone Season source) will also apply to the owner and operator of the CAIR NO_x Ozone Season source and to the owner and operator of each budget unit at the source.

4) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a budget unit (including any provision applicable to the CAIR designated representative of a budget unit) will also apply to the owner and operator of the budget unit. Except with regard to the requirements applicable to budget units with a common stack under 40 CFR 96, subpart HHHH, the owner and operator and the account representative of one budget unit shall not be liable for any violation by any other budget unit of which they are not an owner or operator or the CAIR designated

representative and that is located at a source of which they are not an owner or operator or the CAIR designated representative.

- 5) The CAIR designated representative of a budget unit that has excess emissions in any control period must surrender the allowances as required for deduction pursuant to 40 CFR 96.354(d)(1).
- 6) The owner or operator of a budget unit that has excess NO_x emissions in any control period must pay any fine, penalty, or assessment or comply with any other remedy imposed pursuant to the Act and 40 CFR 96.354(d)(2).
- g) Effect on other authorities: No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or a retired unit exemption pursuant to 40 CFR 96.305 will be construed as exempting or excluding the owner and operator and, to the extent applicable, the CAIR designated representative of a CAIR NO_x Ozone Season source or a budget unit from compliance with any other regulation promulgated pursuant to the CAA, the Act, any State regulation or permit, or a federally enforceable permit.

(Source: Added at _____, effective _____)

Section 217.457 Appeal Procedures

The appeal procedures for decisions of USEPA pursuant to the CAIR NO_x Ozone Season Trading Program are set forth in 40 CFR 78, as incorporated by reference in Section 217.104.

(Source: Added at _____, effective _____)

Section 217.458 Permit Requirements

- a) Permit requirements:
 - 1) The owner or operator of each CAIR NO_x Ozone Season source with a budget unit is required to submit:
 - A) A complete permit application addressing all applicable CAIR NO_x Ozone Season Trading Program requirements for a permit meeting the requirements of this Section, applicable to each budget unit at the source. Each CAIR permit must contain elements required for a complete CAIR permit application pursuant to subsection (b)(2) of this Section.
 - B) Any supplemental information that the Agency determines necessary in order to review a CAIR permit application and issue

any CAIR permit.

- 2) Each CAIR permit will be issued pursuant to Sections 39 and 39.5 of the Act and will contain federally enforceable conditions addressing all applicable CAIR NO_x Ozone Season Trading Program requirements and will be a complete and segregable portion of the source's entire permit pursuant to subsection (a)(1) of this Section.
- 3) No CAIR permit may be issued until the Agency and USEPA have received a complete certificate of representation for a CAIR designated representative pursuant to 40 CFR 96, subpart BBBB, for the CAIR NO_x Ozone Season source and the budget unit at the source.
- 4) For all budget units that commenced operation before October 1, 2008, the owner or operator of the unit must submit a CAIR permit application meeting the requirements of this Section on or before November 1, 2009.
- 5) For all units that commence operation on or after October 1, 2008, the owner or operator of these units must submit applications for construction and operating permits pursuant to the requirements of Sections 39 and 39.5 of the Act, as applicable, and 35 Ill. Adm. Code 201, and the applications must specify that they are applying for CAIR permits and must address the permit application requirements of this Section 217.458.

b) Permit applications:

- 1) Duty to apply: The owner or operator of any CAIR NO_x Ozone Season source with one or more budget units must submit to the Agency a CAIR permit application for the source covering each budget unit pursuant to subsection (b)(2) of this Section by the applicable deadline in subsection (a)(4) or (a)(5) of this Section. The owner or operator of any CAIR NO_x Ozone Season source with one or more budget units must reapply for a CAIR permit for the source as required by this Subpart, 35 Ill. Adm. Code 201, and, as applicable, Sections 39 and 39.5 of the Act.
- 2) Information requirements for CAIR permit applications. A complete CAIR permit application must include the following elements concerning the source for which the application is submitted:
 - A) Identification of the source, including plant name. The ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration must also be included, if applicable;
 - B) Identification of each budget unit at the source;

- C) The compliance requirements applicable to each budget unit as set forth in Section 217.456; and
 - D) An explanation of why each budget unit is subject to the requirements of Section 217.454 of this Subpart.
- 3) An application for a CAIR permit will be treated as a modification of the CAIR NO_x Ozone Season source's existing federally enforceable permit, if such a permit has been issued for that source, and will be subject to the same procedural requirements. When the Agency issues a CAIR permit pursuant to the requirements of this Section, it will be incorporated into and become part of that source's existing federally enforceable permit.
- c) Permit content: Each CAIR permit is deemed to incorporate automatically the definitions and terms specified in Part 201, Part 211, Section 217.103, Section 217.452, and 40 CFR 96.302, as incorporated by reference in Section 217.104, and, upon recordation of USEPA under 40 CFR 96, subparts FFFF and GGGG, as incorporated by reference in Section 217.104, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from the compliance account of the CAIR NO_x Ozone Season source covered by the permit.

(Source: Added at _____, effective _____)

Section 217.460 Ozone Season Trading Budget

The CAIR NO_x Ozone Season Trading budget available for allowance allocations for each control period will be determined as follows:

- a) The total base CAIR NO_x Ozone Season Trading budget for non-EGUs is 4,948 tons per control period beginning in 2009 and for each control period thereafter, subject to a reduction for the new unit set aside (NUSA). Three percent of the budget will be allocated to the NUSA resulting in a CAIR NO_x Ozone Season Trading budget available for allocation to non-EGUs of 4,809 tons per control period pursuant to Sections 217.464 and 217.466.
- b) The Agency may adjust the CAIR NO_x Ozone Season NO_x Trading Budget available for allocations in subsection (a) of this Section by adding allowances for budget units subject to this Subpart opting to become subject to this Subpart pursuant to the requirements for opt-in budget units in Sections 217.472 and 217.474 of this Subpart.
- c) The Agency shall adjust the CAIR NO_x Ozone Season Trading Budget available for allocations in subsection (a) of this Section to remove allowances from units

opting to become exempt pursuant to the requirements for low-emitters in Sections 217.454(c) and 217.470 of this Subpart.

- d) If USEPA adjusts the total base CAIR NO_x Ozone Season Trading budget for any reason, the Agency will adjust the base CAIR NO_x Ozone Season Trading budget and the CAIR NO_x Ozone Season Trading budget available for allocation, accordingly.

(Source: Added at _____, effective _____)

Section 217.461 Timing for Ozone Season Allocations

- a) On or before September 1, 2009, the Agency will submit to USEPA the CAIR NO_x Ozone Season allowance allocations, in accordance with Sections 217.462 and 217.464, for the 2009 control period.
- b) Within ninety (90) days of the effective date of this rule, the Agency will submit to USEPA, the CAIR NO_x Ozone Season allowance allocations, in accordance with Sections 217.462 and 217.464, for the 2010, 2011, 2012, and 2013 control periods.

(BOARD NOTE: Because the Agency did not have a mechanism in place to distribute allowances beyond the 2009 control period, it is necessary for the Agency to issue allowances for multiple control periods in order to eventually issue allowances on the same schedule as the issuance of allowances under Part 225.)

- c) By July 31, 2010, and July 31 of each year thereafter, the Agency will submit to USEPA the CAIR NO_x Ozone Season allowance allocations in accordance with Sections 217.462 and 217.464, for the control period four years after the year of the applicable deadline for submission pursuant to this Section. For example, on July 31, 2010, the Agency will submit to USEPA the allocation for the 2014 control period.
- d) For budget units that commence commercial operation on or after October 1, 2008, that have not been allocated allowances under Section 217.464 for the applicable or any preceding control period, the Agency will allocate allowances from the NUSA in accordance with Section 217.466. The Agency will report these allocations to USEPA by July 31 of the applicable control period. For example, on July 31, 2010, the Agency will submit to USEPA the allocations from the NUSA for the 2010 control period.

(Source: Added at _____, effective _____)

Section 217.462 Methodology for Calculating Ozone Season Allocations

For each control period, the Agency will allocate the total number of NO_x allowances in the CAIR NO_x Ozone Season Trading Budget apportioned to budget units under Section 217.460 of this Subpart, subject to adjustment as provided in this Subpart. These allocations will be issued as provided in subsections (a) and (b) of this Section, as follows:

- a) The Agency will allocate to each budget unit that is listed in Appendix E of this Part the number of allowances listed in Column 5 of Appendix E of this Part for that budget unit for each seasonal period of the program, except as provided in Section 217.464(b) of this Subpart. The Agency will report these allocations to USEPA each year by July 31 for the control period four years after the applicable deadline.

(BOARD NOTE: The Agency has issued allowances to the owners/operators of subject budget units for the 2007 and 2008 ozone control periods. However, the Agency did not issue allowances to budget units for the 2009 ozone control period. Thus, for 2009 NO_x Ozone Season, the Agency shall allocate to each company that is listed in Appendix E of this Part the number of allowances listed in Column 5 of Appendix E of this Part for the company's subject budget unit(s). The Agency shall report these allocations to USEPA prior to September 1, 2009.)

- b) To the extent that allowances remain in the NUSA after any allocation, the Agency shall allocate any such remaining allowances pro-rata to the owner or operator of the budget units listed in Appendix E of this Part to the extent a whole allowance may be allocated to any such owner or operator. The Agency will make such allocation by August 15 of each year. If there are insufficient allowances to allocate a whole allowance to any such owner or operator of a budget unit listed in Appendix E of this Part, such allowances shall be retained by the Agency in the NUSA. Any such allowances retained in the NUSA shall be accumulated in the NUSA and may either:

- 1) Be available for allocation to new budget units for future control periods, subject to the provisions of Section 217.466 of this Subpart; or
- 2) If, after any annual allocation to new budget units, there are sufficient allowances accumulated in the NUSA to allocate one or more whole allowances to the owner or operator of existing budget units listed in Appendix E of this Part on a pro-rata basis, such accumulated whole allowances shall be allocated pro-rata to such owner or operators.

(Source: Added at _____, effective _____)

Section 217.464 Ozone Season Allocations

Electronic Filing - Received, Clerk's Office, August 3, 2009

- a) Appendix E of this Part identifies the sources with existing budget units subject to this Subpart and the number of NO_x allowance allocations that each such budget unit is eligible to receive each control period, subject to adjustment in accordance with Section 217.460 of this Subpart and for transfers made in accordance with subsection (b) of this Section. Each CAIR NO_x Ozone Season source's allocation will be adjusted proportionally based on the adjusted CAIR NO_x Ozone Season Trading Budget as provided by Section 217.460 of this Subpart.
- b) The owner or operator of budget units subject to this Subpart may permanently transfer all or part of their allocation of allowances pursuant to Column 5 of Appendix E of this part, subject to adjustment in accordance with this Subpart, to another budget unit subject to this Subpart, or to a budget unit subject to Subpart E of Part 225. Such transfer will be effective by submitting a written request to the Agency that is signed by the CAIR designated representative for the transferring budget unit and containing the account number for the recipient budget unit. The owner or operator of budget units subject to this Subpart may not permanently transfer all or part of the NUSA indicated as the difference between Column 4 and Column 5 of Appendix E of this Part.
- c) Subject to adjustment in accordance with this Subpart, or revocation or revision of the CAIR NO_x Ozone Season Trading Program or this Subpart, allocations pursuant to Appendix E of this Part exist for the life of the program, including all or a portion of any allocation transferred to another budget unit pursuant to the provisions of this Subpart.

(Source: Added at _____, effective _____)

Section 217.466 New Unit Set-Aside (NUSA)

For the 2010 control period and each control period thereafter, the Agency will allocate CAIR NO_x Ozone Season allowances from the NUSA to "new" budget units that commenced commercial operation on or after October 1, 2009, and do not yet have an allocation for the particular control period or any preceding control period pursuant to Section 217.464, in accordance with the following procedures:

- a) Beginning with the 2010 control period and each control period thereafter, the Agency will establish a separate NUSA for each control period. Each NUSA will be allocated allowances equal to 3% of each source's initial total CAIR NO_x Ozone Season Trading Budget allocation as reflected in Column 5 of Appendix E of this Part, which is 139 allowances, for each control period. The allocation for the NUSA from each source shall be based on 3% of the source's initial allocation, without regard to subsequent adjustment to any such source's current allocation, including permanent transfer of allowances to another source or revision of the Subpart U NO_x Trading Budget by USEPA.

- b) “New” budget units must have an allowance for every ton of NO_x emitted during the control period as provided in Section 217.456(d) of this Subpart.
- c) The CAIR designated representative of a “new” budget unit may submit to the Agency a request, in a format specified by the Agency, to be allocated CAIR NO_x Ozone Season allowances from the NUSA, starting with the first control period after the control period in which the new unit commences commercial operation and until the third control period after the control period in which the unit commenced commercial operation. The NUSA allowance allocation request may only be submitted after a new unit has operated during one control period, and no later than March 1 of the control period for which allowances from the NUSA are being requested.
- d) The Agency will allocate allowances from the NUSA to a new budget unit using the following procedures:
- 1) The methodology for calculating the allowances available to be allocated to new budget units subject to this Subpart from the NUSA is based on the more stringent emission rate of 0.15 lbs/mmbtu or the permitted NO_x emission rate, but not less than 0.055 lbs/mmbtu.
 - 2) The general equation for determining allowances is:

$$\frac{A}{2000} = \text{HI} \times \text{ER}$$

Where HI = heat input (in mmbtu/control period) as determined in accordance with subsection (c) of this Section.

Where ER = The NO_x emission rate in lbs/mmbtu as determined in accordance with subsection (a) of this Section.

Where A = allowances of NO_x/control period.

- 3) The projected heat input shall be determined as set forth below, divided by 2000 lbs/ton:
 - A) For “new” budget units subject to this Subpart that have seasonal heat input from at least 3 control periods prior to the allocation year, the average of the budget unit's 2 highest seasonal heat inputs from the control periods 1 to 3 years prior to the allocation year;
 - B) For “new” budget units subject to this Subpart that have seasonal heat input from only 2 control periods prior to the allocation year,

the average of the budget unit's seasonal heat inputs from the control periods 1 and 2 years prior to the allocation year;

- C) For “new” budget units subject to this Subpart that have seasonal heat input from only the control period prior to the allocation year, the heat input from that control period; or
 - D) For “new” budget units subject to this Subpart that have not operated for at least 77 days of the control period prior to the allocation year, the budget unit's maximum design heat input for the control period as designated in the construction permit.
- e) The Agency will review each NUSA allowance allocation request pursuant to subsection (c) of this Section. The Agency will accept a NUSA allowance allocation request only if the request meets, or is adjusted by the Agency as necessary to meet, the requirements of this Section.
 - f) By June 1 of the applicable control period, the Agency will notify each CAIR designated representative that submitted a NUSA allowance request of the amount of CAIR NO_x Ozone Season allowances from the NUSA, if any, eligible for purchase for the “new” budget unit pursuant to the requirements of this Section. If the Agency does not receive payment by June 15 of the applicable year, the CAIR representative will forfeit his/her eligibility to purchase the allowances offered. The Agency will make available for purchase those forfeited allowances on a pro-rata basis to “new” budget units requesting allocations pursuant to this Section, up to the number of allowances requested by each account representative. Such additional allocations are subject to the purchase requirements of subsection (g) of this Section.
 - g) The price of allowances from the NUSA shall be the average price at which CAIR NO_x Ozone Season Trading Program allowances were traded in the interstate CAIR NO_x Ozone Season Trading Program for the preceding control period.
 - h) The fees collected by the Agency from the sale of allowances will be distributed pro-rata to budget units receiving allowances pursuant to Appendix E of this Part on the basis of allocated allowances, subject to Agency administrative costs assessed pursuant to Section 9.9 of the Act.
 - i) The Agency will allocate CAIR NO_x Ozone Season allowances to new units from the NUSA no later than July 31, 2010 and by July 31 of the applicable control period for each year thereafter.
 - j) After a new budget unit has operated in one control period, it becomes an existing unit for the purposes of calculating future allocations in Section 217.464 only, and the Agency will allocate CAIR NO_x Ozone Season allowances for that unit, for

the control period commencing three control periods after the control period in which the unit commenced commercial operation, pursuant to this Section.

- k) If, after the completion of the procedures in this Section 217.466 for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the NUSA for the control period, the Agency will allocate those allowances pursuant to the provisions of Section 217.462(b).

(Source: Added at _____, effective _____)

Section 217.470 Low-Emitter Requirements

Starting with the effective date of the permit referred to in Section 217.454(c), a budget unit electing low-emitter status shall be subject only to the requirements of Section 217.454(c) and the following requirements:

- a) For each control period the owner or operator elects low-emitter status, the federally enforceable permit conditions must:
- 1) Restrict the unit to burning only natural gas, fuel oil, or natural gas and fuel oil;
 - 2) Limit the unit's potential NO_x mass emissions for the control period to 25 tons or less;
 - 3) Restrict the unit's operating hours to the number calculated by dividing the allowable potential NO_x mass emissions provided in subsection (a)(2) of this Section by the unit's maximum potential hourly NO_x mass emissions;
 - 4) Require that the unit's potential NO_x mass emissions shall be calculated by using the monitoring provisions of 40 CFR 75, or if the unit does not rely on these monitoring provisions, as follows:
 - A) Select the applicable default NO_x emission rate:
0.7 lbs/mmbtu for combustion turbines burning natural gas exclusively during the control period; 1.2 lbs/mmbtu for combustion turbines burning any fuel oil during the control period; 1.5 lbs/mmbtu for boilers burning natural gas exclusively during the control period; or 2 lbs/mmbtu for boilers burning any fuel oil during the control period.
 - B) Multiply the default NO_x emission rate under subsection (a)(4)(A) of this Section by the unit's maximum rated hourly heat input which is the higher of the manufacturer's maximum rated hourly

heat input or the highest observed hourly heat input. The owner or operator of the unit may request in the permit application required by this subsection that the Agency use a lower value for the unit's maximum rated hourly heat input. The Agency may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative. The owner or operator must demonstrate that such lower value is representative of the unit's current capabilities because modifications have been made to the unit that permanently limit the unit's capacity;

- 5) Require that for 5 years at the source that includes the unit, records demonstrating that the operating hours restriction, the fuel use restriction and the other requirements of the permit related to these restrictions were met; and
 - 6) Require that the owner or operator of the unit report to the Agency for each control period the unit's hours of operation (treating any partial hour of operation as a whole hour of operation), heat input and fuel use by type. This report shall be submitted by November 1st of each year the unit elects low-emitter status.
- b) The Agency will notify the USEPA in writing of each unit electing low-emitter status pursuant to the requirements of subsection (a) of this Section and when any of the following occurs:
- 1) The permit with federally enforceable conditions that includes the restrictions in subsection (a) of this Section is issued by the Agency;
 - 2) Such permit is revised to remove any such restriction;
 - 3) Such permit includes any such restriction that is no longer applicable; or
 - 4) The unit does not comply with any such restriction.
- c) The unit shall become subject to the requirements of this Subpart if, for any control period under this Section, the fuel use restriction or the operating hours restriction under subsection (a) of this Section is removed from the unit's permit or otherwise is no longer applicable, or the unit does not comply with the fuel use restriction or the operating hours restriction under subsection (a) of this Section. Such unit shall be treated as commencing operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

- d) The owner or operator of a unit to which the Agency has ever allocated allowances under Appendix E of this Part may elect low-emitter status. In that case, the Agency will reduce the CAIR NO_x Ozone Season budget for non-EGUs by the number of allowances equal to the amount of NO_x emissions the unit is permitted to emit during the control period, pursuant to a federally enforceable condition in the unit's permit. The owner or operator of a unit electing low-emitter status may demonstrate that it holds sufficient allowances to cover the unit's NO_x emissions by offsetting the emissions from such unit, not to exceed its permitted emission limit as included in its federally enforceable permit.

(Source: Added at _____, effective _____)

Section 217.472 Opt-In Budget Units

- a) Any operating fossil fuel-fired stationary boiler, combustion turbine, combined cycle system, cement kiln or stationary internal combustion engine in the State may qualify under this Subpart to become an opt-in budget unit if it:
- 1) Is not a CAIR NO_x Ozone Season budget EGU under Part 225;
 - 2) Vents all of its emissions to a stack;
 - 3) Has documented heat input for more than 876 hours in the six months immediately preceding the submission of an application for an initial CAIR permit under subsection (d) of this Section;
 - 4) Is not covered by a retired unit exemption under 40 CFR 96.305; and
 - 5) Is not covered by the low-emitter exemption under Section 217.454(c) of this Subpart.

(BOARD NOTE: The opt-in provisions in Sections 217.472 through 217.480 are intended to allow emission units that meet the applicability criteria in Section 217.472 to participate in Subpart U. These provisions are not intended to opt units into the CAIR program. The federal model CAIR rule ozone season opt-in provisions have not been incorporated into this Subpart.)

- b) Except as otherwise provided in this Subpart, an opt-in budget unit shall be treated as a budget unit for purposes of applying this Subpart and 40 CFR 96.
- c) Authorized CAIR designated representative:

- 1) If an opt-in unit is located at the same source as one or more budget units, it shall have the same CAIR designated representative as those budget units.
 - 2) If the opt-in unit is not located at the same source as one or more budget units, the owner or operator of the opt-in unit shall submit a complete certificate of representation under 40 CFR 96.313.
- d) To apply for a CAIR permit, the CAIR designated representative of a unit meeting the qualifications of subsection (a) of this Section must, except as provided under Section 217.476(f) of this Subpart, submit to the Agency:
- 1) A CAIR permit application for the unit that:
 - A) Meets the requirements under Section 217.458 of this Subpart; and
 - B) Contains provisions for a change in the regulatory status of the unit to an opt-in budget unit pursuant to the provisions of Section 217.478(b) of this Subpart.
 - 2) A monitoring plan for the unit in accordance with 40 CFR 96, subpart HHHH.

(Source: Added at _____, effective _____)

Section 217.474 Opt-In Process

The Agency will issue or deny a CAIR permit for an opt-in unit in accordance with Section 217.458 of this Subpart and the following:

- a) The Agency will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR permit for an opt-in unit. A monitoring plan is sufficient, for purposes of interim review, if the plan contains information demonstrating that the NO_x emission rate and heat input of the unit are monitored and reported in accordance with 40 CFR 96, subpart HHHH. A determination of sufficiency shall not be construed as acceptance or approval of that unit's monitoring plan.
- b) If the Agency determines that the unit's monitoring plan is sufficient under subsection (a) of this Section and after completion of the monitoring system certification under 40 CFR 96, subpart HHHH, the NO_x emission rate and the heat input of the unit shall be monitored and reported in accordance with 40 CFR 96, subpart HHHH, for one full control period during which the monitoring system availability is not less than 90% and during which the unit is in full compliance with any applicable State or federal emissions or emissions-related requirements.

- c) Based on the information monitored and reported under subsection (b) of this Section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmbtu) for the control period, and the unit's baseline NO_x emission rate shall be calculated as the unit's total NO_x emissions (in lbs) for the control period divided by the unit's baseline heat rate.

(Source: Added at _____, effective _____)

Section 217.476 Opt-In Budget Units: Withdrawal from the CAIR NO_x Ozone Season Trading Program

- a) Requesting withdrawal: To withdraw from the CAIR NO_x Ozone Season Trading Program, the CAIR designated representative of an opt-in budget unit shall submit to the Agency a request to withdraw from the CAIR NO_x Ozone Season Trading Program and to withdraw the CAIR permit effective as of a specified date between (and not including) September 30 and May 1. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.
- b) Conditions for withdrawal: Before an opt-in budget unit may withdraw from the CAIR NO_x Ozone Season Trading Program and the CAIR permit may be withdrawn under this Section, the following conditions must be met:
- 1) For the control period immediately before the withdrawal is to be effective, the CAIR designated representative must submit to the Agency an annual compliance certification report in accordance with 40 CFR 96.30.
 - 2) If the opt-in budget unit has excess emissions for the control period immediately before the withdrawal is to be effective, USEPA has deducted from the opt-in budget unit's compliance account of the NO_x budget source where the opt-in budget unit is located, the number of allowances required in accordance with 40 CFR 96.354(d) for the control period.
 - 3) After the requirements for withdrawal under subsections (b)(1) and (2) of this Section are met, USEPA will deduct from the opt-in unit's compliance account of the CAIR NO_x Ozone Season source where the opt-in budget unit is located, allowances equal in number to any allowances allocated to that unit under Section 217.480 of this Subpart for the control period for which the withdrawal is to be effective and earlier control periods. USEPA will close the opt-in budget unit's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the opt-in unit. The CAIR designated

representative for the opt-in budget unit shall become the CAIR designated representative for the general account.

- c) An opt-in budget unit that withdraws from the CAIR NO_x Ozone Season Trading Program shall comply with all requirements under the CAIR NO_x Ozone Season Trading Program concerning all years for which such opt-in budget unit was an opt-in budget unit, even if such requirements arise or must be complied with after the withdrawal takes effect.
- d) Notification:
- 1) After the requirements for withdrawal under subsections (a) and (b) of this Section are met (including deduction of the full amount of allowances required), the Agency will revise the CAIR permit indicating a specified effective date for the withdrawal that is after the requirements in subsections (a) and (b) of this Section have been met and that is prior to May 1 or after September 30.
 - 2) If the requirements for withdrawal under subsections (a) and (b) of this Section are not met, the Agency will issue a notification to the owner or operator and the account representative of the opt-in budget unit that the opt-in unit's request to withdraw its CAIR permit is denied. If the opt-in budget unit's request to withdraw is denied, the opt-in budget unit shall remain subject to the requirements for an opt-in budget unit.
- e) Reapplication upon failure to meet conditions of withdrawal: If the Agency denies the opt-in budget unit's request to withdraw, the account representative of the opt-in budget unit may submit another request to withdraw in accordance with subsections (a) and (b) of this Section.
- f) Ability to return to the CAIR NO_x Ozone Season Trading Program: Once an opt-in unit withdraws from the CAIR NO_x Ozone Season Trading Program and its CAIR permit is withdrawn under this Section, the CAIR designated representative may not submit another application for a CAIR permit under Section 217.472(d) of this Subpart for the unit prior to the date that is four years after the date on which the CAIR permit with opt-in conditions is withdrawn.

(Source: Added at _____, effective _____)

Section 217.478 Opt-In Units: Change in Regulatory Status

- a) Notification: When an opt-in unit becomes an opt-in budget unit under Section 217.474 of this Subpart, the owner or operator shall notify the Agency and USEPA in writing of such change in the opt-in unit's regulatory status within 30 days of such change.

- b) Any permit application that provides for a change in the regulatory status of a unit to an opt-in budget unit pursuant to Section 217.472(d)(1)(B) of this Subpart and included in a CAIR permit, is effective on the date on which such opt-in unit becomes an opt-in budget unit.
- c) USEPA's action:
- 1) USEPA will deduct from the compliance account for the opt-in budget unit under this Section allowances equal in number to and allocated for the same or a prior control period as:
 - A) Any allowances allocated to the budget unit (as an opt-in unit) under Section 217.480 of this Subpart for any control period after the last control period during which the unit's CAIR permit was effective; and
 - B) If the effective date of any CAIR permit under subsection (b) of this Section is during a control period, the allowances allocated to the opt-in budget unit (as an opt-in unit) under Section 217.480 of this Subpart for the control period multiplied by the ratio of the number of days in the control period, starting with the effective date of the CAIR permit under subsection (b) of this Section, divided by the total number of days in the control period.
 - 2) The CAIR designated representative shall ensure that the compliance account of the opt-in budget unit under subsection (b) of this Section contains the allowances necessary for completion of the deduction under subsection (c)(1) of this Section. If the compliance account does not contain sufficient allowances, USEPA will deduct the required number of allowances, regardless of the control period for which they were allocated, whenever allowances are recorded in the compliance account.
 - 3) For every control period during which any CAIR permit under subsection (b) of this Section is effective, the opt-in budget unit under subsection (b) of this Section will be treated, solely for purposes of allowance allocations under Section 217.462 or 217.466 of this Subpart, as a unit that commenced operation on the effective date of the CAIR permit under subsection (b) of this Section and will be allocated allowances in accordance with Section 217.462 or 217.466 of this Subpart.
 - 4) Notwithstanding subsection (c)(2) of this Section, if the effective date of any CAIR permit under subsection (b) of this Section is during a control period, the following number of allowances will be allocated to the opt-in budget unit for the control period: the number of allowances otherwise

allocated to the opt-in budget unit under Section 217.462 or 217.466 of this Subpart for the control period multiplied by the ratio of the number of days in the control period, starting with the effective date of the CAIR permit under subsection (b) of this Section, divided by the total number of days in the control period.

- d) When the owner or operator of an opt-in unit does not renew the CAIR permit for the opt-in budget unit issued pursuant to Section 217.472(d), USEPA will deduct from the opt-in budget unit's compliance account allowances equal in number to and allocated for the same or a prior control period as any allowances allocated to the opt-in budget unit under Section 217.480 of this Subpart for any control period after the last control period for which the CAIR permit is effective. The account representative shall ensure that the opt-in budget unit's compliance account contains the allowances necessary for completion of such deduction. If the compliance account does not contain sufficient allowances, USEPA will deduct the required number of allowances, regardless of the control period for which they were allocated, whenever allowances are recorded in the compliance account.
- e) After the deduction under subsection (d) of this Section is completed, USEPA will close the opt-in unit's compliance account. If any allowances remain in the compliance account after completion of such deduction and any deduction under 40 CFR 96.354, USEPA will close the opt-in unit's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owner or operator of the opt-in unit. The CAIR designated representative for the opt-in unit shall become the representative for the general account.

(Source: Added at _____, effective _____)

Section 217.480 Allowance Allocations to Opt-In Budget Units

- a) Allowance allocations:
- 1) By the December 31 immediately before the first control period for which the CAIR permit is effective, the Agency will allocate allowances to the opt-in budget unit and submit to USEPA the allocation for the control period in accordance with subsection (b) of this Section.
 - 2) By no later than the December 31 after the first control period for which the CAIR permit is in effect and December 31 of each year thereafter, the Agency will allocate allowances to the opt-in budget unit and submit to USEPA allocations for the next control period, in accordance with subsection (b) of this Section.

- b) For the first control period, and for each subsequent control period for which the opt-in budget unit has a CAIR permit, the opt-in budget unit will be allocated allowances in accordance with the following procedures:
- 1) The heat input (in mmbtu) used for calculating allowance allocations will be the lesser of:
 - A) The opt-in unit's baseline heat input determined pursuant to Section 217.474(c) of this Subpart; or
 - B) The opt-in unit's heat input, for the control period in the year prior to the year of the first control period for which the allocations are being calculated, as determined in accordance with 40 CFR 96, subpart HHHH.
 - 2) The Agency will allocate allowances to the opt-in budget unit in an amount equaling the heat input (in mmbtu) determined under subsection (b)(1) of this Section multiplied by the lesser of:
 - A) The unit's baseline NO_x emission rate (in lbs/mmbtu) determined pursuant to Section 217.474(c) of this Subpart; or
 - B) The lowest NO_x emissions limitation (calculated in lbs/mmbtu) under State or federal law that is applicable to the budget opt-in unit for the year of the control period for which the allocations are being calculated, regardless of the averaging period to which the emissions limitation applies.

(Source: Added at _____, effective _____)

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Section 217.Appendix E Large Non-Electrical Generating Units

<u>COMPANY NAME</u>	<u>COMPANY SOURCE ID #/ NAME</u>	<u>UNIT DESCRIPTION DESIGNATION</u>	<u>BUDGET ALLOCATION</u>	<u>BUDGET ALLOCATI ON LESS 3% NSSAFOR NEW UNIT SET ASIDE</u>
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>

A. E. STALEY MANUFACTURING CO

115015ABX	85070061299	COAL-FIRED BOILER 1	176	171
115015ABX	85070061299	COAL-FIRED BOILER 2	175	170
115015ABX	73020084129	BOILER #25	125	121
A. E. STALEY MANUFACTURING CO (Total Allocation)			476	462

ARCHER DANIELS MIDLAND CO EAST PLANT

ARCHER DANIELS MIDLAND COMPANY (DECATUR COMPLEX)	115015AAE	COAL-FIRED BOILER 1	238	234
	115015AAE	COAL-FIRED BOILER 2	261	253
	115015AAE	COAL-FIRED BOILER 3	267	259
	115015AAE	COAL-FIRED BOILER 4	276	268
	115015AAE	COAL-FIRED BOILER 5	275	267
	115015AAE	COAL-FIRED BOILER 6	311	302
		COAL-FIRED BOILER 7		
		COAL-FIRED BOILER 8		
		COAL-FIRED BOILER 9		
	115015AAE	GAS-FIRED BOILER 71	19	18
	115015AAE	GAS-FIRED BOILER 82	19	18
ARCHER DANIELS MIDLAND CO EAST PLANT (Total Allocation)TOTAL ALLOCATION			1,666,641	1,616,592

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ARCHER DANIELS MIDLAND COMPANY (PEORIA PLANT)	143065AJE	BOILER 13		
		BOILER 14		
TOTAL ALLOCATION			25	24

AVENTINE RENEWABLE ENERGY, INC.	179060ACR	BOILER C - PULVERIZED DRY BOTTOM		
TOTAL ALLOCATION			377	366

BUNGE MILLING, INC.	183020ABT	CFB BOILER		
TOTAL ALLOCATION			101	98

CHICAGO COKE CO., INC.	031600AMC	BOILER NO 4B		
TOTAL ALLOCATION			60	58

CITGO PETROLEUM CORPORATION	197090AAI	BOILER 430B-1		
TOTAL ALLOCATION			39	38

CONOCOPHILLIPS COMPANY (WOOD RIVER REFINERY)	119090AAA	BOILER NO 15		
		BOILER NO 16		
		BOILER NO 17		
TOTAL ALLOCATION			160	155

CORN PRODUCTS INTERNATIONAL INC

<u>CORN PRODUCTS INTERNATIONAL, INC.</u>	031012ABI	GAS FIRED BOILER #5	55	53
	031012ABI	BOILER # 1	210	204
	031012ABI	COAL FIRED BOILER # 6		
	031012ABI	BOILER # 2-7	210	203
	031012ABI	COAL FIRED		
	031012ABI	GAS FIRED BOILER NO 4	81	79
		WEST STACK		
		BLRS BOILER # 10		
031012ABI		BOILER # 3 COAL FIRED	211	205
031012ABI		GAS FIRED BOILER NO 5-	81	79
		EAST STACK BOILER		
<u>CORN PRODUCTS INTERNATIONAL INC (Total Allocation)TOTAL ALLOCATION</u>			848	823

<u>EXXON MOBIL OIL CORPORATION (JOLIET REFINERY)</u>	197800AAA	AUX BOILER-REFINERY GAS STATIONARY GAS TURBINE		
<u>TOTAL ALLOCATION</u>			186	180

<u>FLINT HILLS RESOURCES, LP (JOLIET FACILITY)</u>	197800ABZ	CB-706		
<u>TOTAL ALLOCATION</u>			14	14

GREAT LAKES NTC

097811AAC	78080071011	BOILER # 5	26	25
097811AAC	78080071011	BOILER # 6	26	25
<u>GREAT LAKES NTC (Total Allocation)</u>			52	50

JEFFERSON SMURFIT CORPORATION

119010AAL	72120426001	BLR 7 COAL FIRED	39	38
<u>JEFFERSON SMURFIT CORPORATION (Total Allocation)</u>			39	38

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MARATHON OIL CO ILLINOIS REFINING DIV

MARATHON PETROLEUM COMPANY, LLC	033808AAB	BOILER #3 OIL,REF GAS FIRED	53	54
	033808AAB	BOILER #4 REF GAS,OIL FIRED	53	52
MARATHON OIL CO ILLINOIS REFINING DIV (Total Allocation)			106	103
TOTAL ALLOCATION				

EXXON MOBIL

197800AAA	72110567002	AUX BOILER-REFINERY GAS	101	98
197800AAA	86010009043	STATIONARY GAS TURBINE	85	82
EXXON MOBIL (Total Allocation)			186	180

WILLIAMS

179060ACR	73020087019	BOILER C- PULVERIZED DRY BOTTOM	377	366
WILLIAMS (Total Allocation)			377	366

EQUISTAR

MORRIS COGENERATION, LLC	063800AAC063800AAJ	BOILER # 1	40	39
	063800AAC	BOILER # 2	40	39
	063800AAC	#3 GAS FIRED BOILER	40	39
	063800AAC	#5 GAS FIRED BOILER	40	39
	063800AAC	#6 BOILER	40	38
EQUISTAR (Total Allocation)			200	194
TOTAL ALLOCATION				

NAVAL TRAINING CENTER/GREAT LAKES	097811AAC	BOILER # 5		
		BOILER # 6		
TOTAL ALLOCATION			52	50

EQUISTAR

041804AAB	72121207108	BOILER NO 1	121	118
041804AAB	72121207109	BOILER NO 2	121	118
041804AAB	72121207110	BOILER NO 3	121	117
041804AAB	72121207111	BOILER NO 4	120	116

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041804AAB	72121207112	BOILER NO 5	0	0
EQUISTAR (Total Allocation)			483	469

TATE & LYLE INGREDIENTS AMERICAS, INC.	115015ABX	COAL-FIRED BOILER 1		
		COAL-FIRED BOILER 2		
		BOILER #25		
TOTAL ALLOCATION			476	462

TOSCO

119090AAA	72110633080	BOILER NO 15	40	38
119090AAA	72110633081	BOILER NO 16	40	39
119090AAA	72110633082	BOILER NO 17	80	78
TOSCO (Total Allocation)			160	155

TRIGEN-CINERGY SOLUTIONS OF TUSCOLA, LLC	041030ABG	BOILER NO 1		
		BOILER NO 2		
		BOILER NO 3		
		BOILER NO 4		
		BOILER NO 5		
TOTAL ALLOCATION			483	469

U S STEEL UNITED STATES STEEL CORPORATION --(SOUTH WORKS)

UNITED STATES STEEL CORPORATION (SOUTH WORKS)	031600ALZ	NO. 6 BOILER,#5 POWER STATION (FUEL-NAT.GAS)	90	88
	031600ALZ	NO 1 BLR NG	90	87
U S STEEL SOUTH WORKS (Total Allocation) TOTAL ALLOCATION			180	175

UNIV OF ILL - ABBOTT POWER PLANT

019010ADA	82090027006	BOILER #7	86	83
UNIV OF ILL - ABBOTT POWER PLANT (Total Allocation)			86	83

CITGO PETROLEUM CORPORATION

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197090AAI	72110253037	BOILER 43-B-1	23	22
CITGO PETROLEUM CORPORATION (Total Allocation)			23	22

~~LTV STEEL COMPANY~~

301600AMC	[UNIT DESIGNATION]	BOILER NO 4B	*	*
LTV STEEL COMPANY (Total Allocation)			*	*

~~* Pursuant to Section 217.460(f), Column 2, Column 4 and Column 5 will be adjusted at such time as USEPA makes an allocation for LTV Steel's Boiler No. 4B.~~

GRAND TOTAL			4,8824,948	4,7364,809
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(Source: ~~Added/Amended~~ at 25-___ Ill. Reg.5914_____, effective April 17, 2004)

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Section 217. Appendix E Large Non-Electrical Generating Units

COMPANY NAME	SOURCE ID #	UNIT DESIGNATION	BUDGET ALLOCATION	BUDGET ALLOCATI ON LESS 3% FOR NEW UNIT SET ASIDE
1	2	3	4	5

ARCHER DANIELS MIDLAND COMPANY (DECATUR COMPLEX)	115015AAE	COAL-FIRED BOILER 1		
		COAL-FIRED BOILER 2		
		COAL-FIRED BOILER 3		
		COAL-FIRED BOILER 4		
		COAL-FIRED BOILER 5		
		COAL-FIRED BOILER 6		
		COAL-FIRED BOILER 7		
		COAL-FIRED BOILER 8		
		COAL-FIRED BOILER 9		
		GAS-FIRED BOILER 1		
		GAS-FIRED BOILER 2		
		TOTAL ALLOCATION		

ARCHER DANIELS MIDLAND COMPANY (PEORIA PLANT)	143065AJE	BOILER 13		
		BOILER 14		
TOTAL ALLOCATION			25	24

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AVENTINE RENEWABLE ENERGY, INC.	179060ACR	BOILER C - PULVERIZED DRY BOTTOM		
TOTAL ALLOCATION			377	366

BUNGE MILLING, INC.	183020ABT	CFB BOILER		
TOTAL ALLOCATION			101	98

CHICAGO COKE CO., INC.	031600AMC	BOILER NO 4B		
TOTAL ALLOCATION			60	58

CITGO PETROLEUM CORPORATION	197090AAI	BOILER 430B-1		
TOTAL ALLOCATION			39	38

CONOCOPHILLIPS COMPANY (WOOD RIVER REFINERY)	119090AAA	BOILER NO 15		
		BOILER NO 16		
		BOILER NO 17		
TOTAL ALLOCATION			160	155

CORN PRODUCTS INTERNATIONAL, INC.	031012ABI	BOILER #5		
		BOILER # 6		
		BOILER # 7		
		BOILER # 10		
TOTAL ALLOCATION			848	823

EXXON MOBIL OIL CORPORATION (JOLIET REFINERY)	197800AAA	AUX BOILER-REFINERY GAS		
		STATIONARY GAS TURBINE		
TOTAL ALLOCATION			186	180

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FLINT HILLS RESOURCES, LP (JOLIET FACILITY)	197800ABZ	CB-706		
TOTAL ALLOCATION			14	14

MARATHON PETROLEUM COMPANY, LLC	033808AAB	BOILER #3 OIL,REF GAS FIRED		
		BOILER #4 REF GAS,OIL FIRED		
TOTAL ALLOCATION			106	103

MORRIS COGENERATION, LLC	063800AAJ	BOILER # 1		
		BOILER # 2		
		#3 GAS FIRED BOILER		
		#5 GAS FIRED BOILER		
		#6 BOILER		
TOTAL ALLOCATION			200	194

NAVAL TRAINING CENTER/GREAT LAKES	097811AAC	BOILER # 5		
		BOILER # 6		
TOTAL ALLOCATION			52	50

TATE & LYLE INGREDIENTS AMERICAS, INC.	115015ABX	COAL-FIRED BOILER 1		
		COAL-FIRED BOILER 2		
		BOILER #25		
TOTAL ALLOCATION			476	462

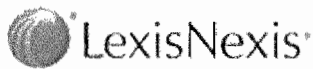
Electronic Filing - Received, Clerk's Office, August 3, 2009

TRIGEN-CINERGY SOLUTIONS OF TUSCOLA, LLC	041030ABG	BOILER NO 1		
		BOILER NO 2		
		BOILER NO 3		
		BOILER NO 4		
		BOILER NO 5		
TOTAL ALLOCATION			483	469

UNITED STATES STEEL CORPORATION -(SOUTH WORKS) UNITED STATES STEEL CORPORATION (SOUTH WORKS)	031600ALZ	NO. 6 BOILER,#5 POWER STATION (FUEL- NAT.GAS) NO 1 BLR NG		
TOTAL ALLOCATION			180	175

GRAND TOTAL			4,948	4,809
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(Source: Amended at _____, effective _____)



LEXSEE 66 FR 56449

FEDERAL REGISTER

Vol. 66, No. 217

Rules and Regulations

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 52

[IL208-2; IL209-2; FRL-7077-9]

Approval and Promulgation of Implementation Plans; Illinois NO[X] Regulations

66 FR 56449

DATE: Thursday, November 8, 2001

ACTION: Final rule. [*56450]

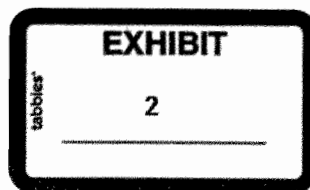
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To view a specific page, transmit p* and the page number, e.g. p*1

[*56449]

SUMMARY: USEPA is approving Illinois regulations to control emissions of nitrogen oxides (NO[X]). This action approves rules regulating cement kilns and rules regulating industrial boilers and turbines. USEPA is conducting separate rulemaking on a third set of rules regulating electricity generating units. USEPA concludes in this action that these three sets of rules satisfy the requirements known as the NO[X] SIP Call.

USEPA proposed this action on June 28, 2001, at *66 FR 34382*. USEPA received comments from three commenters. The Illinois Environmental Protection Agency (Illinois EPA) supports USEPA's proposed action and urges USEPA action on rules granting credit for voluntary NO[X] emission reductions ("Subpart X"). The Illinois Environmental Regulatory Group (IERG) commented that USEPA may not reach a conclusion on the overall adequacy of Illinois' NO[X] regulations unless and until USEPA has completed rulemaking on all of Illinois' NO[X] regulations including Subpart X. LTV Steel believes that it should receive a greater number of allowances to reflect a controlled emission rate more consistent with that of other sources, and requests confirmation that emissions monitoring need not begin until May 31, 2003. USEPA responds to Illinois EPA and IERG that we will conduct rulemaking on Subpart X in the near future but we do not agree with IERG that such rulemaking is a prerequisite to judging whether Illinois has an adequate SIP. USEPA responds to LTV Steel that the proposed number of allowances appropriately reflects 60 percent control of



that unit. USEPA concurs with a delay for emission monitoring for sources not seeking early reduction credits, but states that the acceptable date is May 1, 2003, not May 31, 2003.

EFFECTIVE DATE: This action will be effective on December 10, 2001.

ADDRESSES: Copies of Illinois' submittals and other information are available for inspection during normal business hours at the following address: (We recommend that you telephone John Summerhays at (312) 886-6067, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR-18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR-18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, (*summerhays.john@epa.gov*).

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

- I. What did USEPA propose?
- II. What are USEPA's responses to comments?
 1. Illinois EPA
 2. IERG
 3. LTV Steel
- III. What is USEPA's final action?
- IV. Administrative requirements.

I. What Did USEPA Propose?

Illinois' submittals relating to control of nitrogen oxides (NO[X]) emissions include four principal sets of rules, all of which are in Title 35 of the Illinois Administrative Code, Part 217: 1) Subpart W, regulating electric generating units, submitted February 23, 2001, 2) Subpart T, regulating cement kilns, submitted April 9, 2001, 3) Subpart U, regulating other large boilers and turbines, submitted May 1, 2001, and 4) Subpart X, providing credit for voluntary NO[X] emission reductions, also submitted May 1, 2001. These submittals also include a variety of definitional rules, codified in Part 211. Separately, on June 18, 2001, Illinois submitted a budget demonstration, demonstrating that the regulations in Subparts T, U, and W of Part 217 are sufficient to achieve the levels of NO[X] emissions that USEPA budgeted for Illinois. On June 27, 2001, Illinois further submitted evidence of signed legislation amending the compliance date of these rules to set a fixed compliance date of May 31, 2004.

USEPA published proposed rulemaking on Subpart W on August 31, 2000, at *65 FR 52467*. Final rulemaking on Subpart W is published elsewhere in today's **Federal Register**.

On June 28, 2001, at *66 FR 34382*, USEPA published action proposing to approve most of the rest of Illinois' NO[X] emission control program. Specifically, in that action, USEPA proposed to approve Illinois'

rules for cement kilns and for industrial boilers and turbines, proposed to approve Illinois' budget demonstration, and proposed to conclude that Illinois has satisfied the requirements established by USEPA in its rulemaking known as the NO[X] SIP Call. USEPA conducted expedited rulemaking on these rules due to their similarity to USEPA's rule recommendations. USEPA proposed to exclude Subpart X from this expedited rulemaking but stated its intention to propose action on Subpart X in the near future.

Illinois' budget demonstration submittal also included clarifications of selected elements of Illinois' rules. Most notably, Illinois clarified two terms used in both its electricity generating unit rules and its industrial boiler and turbine rules for limiting emissions from sources seeking low emitter status. As described in the notice of proposed rulemaking, Illinois clarified that "potential NO[X] mass emissions" may be defined as the emissions determined either by emissions monitoring according to Part 75 or by multiplying hours of operation times maximum potential hourly emissions. Illinois further clarified that a source that emits more than the allowable number of tons (25 tons or less per ozone season) shall be considered to have exceeded its permissible number of hours of operation and shall lose its low emitter status. USEPA concurred with these interpretations.

II. What Are USEPA's Responses to Comments?

USEPA received three sets of comments, sent by the Illinois Environmental Protection Agency (Illinois EPA) on July 24, 2001, sent by the Illinois Environmental Regulatory Group (IERG) dated July 26, 2001, and sent by LTV Steel Company ("LTV Steel") also dated July 26, 2001. The following describes these comments and provides USEPA's response.

1. Illinois EPA

Comment: Illinois EPA supports USEPA's proposed rulemaking. Illinois EPA urges action on Subpart X of its NO[X] regulations, which provide credit under specified criteria for sources that voluntarily reduce NO[X] emissions. Illinois EPA acknowledges USEPA's rationale for using "streamlined rulemaking on the Illinois rules needed to satisfy USEPA's NO[X] SIP Call" (i.e. rules restricting NO[X] emissions from electricity generating units, large industrial boilers and turbines, and cement kilns). At the same time, Illinois EPA comments favorably on USEPA statements that "Subpart X provides for an innovative approach to obtaining voluntary reductions of NO[X] emissions" and that USEPA will work with Illinois EPA on Subpart X "to arrive at a program that is approvable and beneficial to the environment."

Response: USEPA acknowledges Illinois EPA's support for the proposed rulemaking. USEPA concurs that Subpart X is an important set of rules and restates its intention to propose rulemaking on Subpart X in the near future. [*56451]

2. IERG

Comment: IERG in general "concur[s] with the analysis and decisions" in USEPA's proposed rulemaking. However, IERG comments at length that USEPA "cannot grant overall approval to the State's submittal unless and until it takes final action approving Subpart X."

IERG first notes that the state law authorizing NO[X] emission regulations dictates that the state's rules shall include provisions for "voluntary reductions of NO[X] emissions * * * to provide additional allowances" for use by trading program participants. IERG states that if this "legislative mandate * * * is left unfulfilled, the [Illinois EPA] will be precluded, by Illinois law, from administering the NO[X] trading program rules." In IERG's view, USEPA recognized this interconnection between state regulations and authorizing state legislation when it insisted that an unacceptable compliance deadline included in the rules pursuant to legislative mandate could not be remedied without amending the legislation. Thus, IERG believes that state legislation makes Subpart X an "integral part of Illinois' NO[X] SIP Call submittal."

IERG then comments that "absent Subpart X, or a variant thereof, the State does not have the necessary legal authority to implement the plan." Legal authority to adopt and implement a plan is one of the criteria under 40 CFR 51 Appendix V for a state submittal to be complete. Therefore, IERG concludes that "USEPA's overall approval of Illinois' ozone transport SIP Call submittal, and * * * the legal authority for Illinois to proceed with the implementation of the NO[X] trading program regulations, can come to fruition only after Subpart X is approved." IERG also notes that while Subpart X is an integral element of Illinois' NO[X] SIP Call submittal, "Subpart X is not an element of Illinois' Chicago area attainment demonstration."

Response: USEPA agrees in part and disagrees in part with IERG's comments. USEPA agrees that it has not completed rulemaking on the NO[X] rules that Illinois has submitted, and USEPA agrees that such rulemaking will not be complete until USEPA conducts rulemakings on Subpart X. USEPA disagrees, however, as to whether rulemaking on Subpart X is a prerequisite for determining whether Illinois has satisfied the NO[X] SIP Call.

The Illinois legislation quoted by IERG instructs the applicable state governmental bodies to propose and adopt regulations on NO[X] emissions pursuant to USEPA's NO[X] SIP Call. The legislation gives more detailed instructions on some points, including instructions to adopt provisions for voluntary reductions of NO[X] emissions for allowance generation purposes. The state included such provisions in Subpart X.

USEPA believes that Illinois has fulfilled its obligations under the state legislation that provided for the NO[X] regulations. However, USEPA does not share IERG's view that the state legislation dictates USEPA's approach to this rulemaking. Illinois' Environmental Protection Act provides for a variety of regulations, including provisions for water pollution and solid waste regulations and including a range of air pollution regulations such as new source permitting and the Illinois volatile organic compound trading program. Clearly USEPA's action on Illinois' NO[X] regulations is not contingent on action on the range of other regulations pursuant to this legislation. All of the new regulations for statewide NO[X] emission control are authorized in a single section of the Environmental Protection Act (section 9.9), but this fact does not itself mandate that USEPA conduct rulemaking jointly on all elements provided for in this section.

In judging whether it can conduct rulemaking separately on the different subparts of Illinois' NO[X] rules, USEPA instead must focus more on the interrelationship of the actual provisions of these subparts. Subpart T specifies control requirements for cement kilns, which for most sources does not involve tradable allowances. Subpart U, addressing industrial boilers and turbines, identifies the regulated sources, specifies how many allowances will be issued to these sources, and requires these sources to hold allowances at least equivalent to their emissions. Subpart W, addressing electricity generating units, again defines the regulated sources, specifies how many allowances will be issued to these sources, and requires adequate allowance holdings. None of these obligations under any of these subparts are altered by any of the provisions of Subpart X.

Subpart X in essence specifies criteria and procedures by which emission units not subject to Subparts T, U, or W that reduce NO[X] emissions may be issued allowances. Issuance of such allowances does not alter the compliance obligations of sources under Subparts T, U, or W. Even if a source regulated under Subparts U or W or possibly T may ultimately take possession of allowances potentially issued under Subpart X, such possession only alters the source's method of compliance and does not alter the basic compliance obligation, in particular the obligation to hold adequate allowances. This rationale is similar to the rationale by which USEPA judges Subparts U and W to be independent: although Subpart U can affect the number of allowances available for purchase by Subpart W sources, the provisions of Subpart U have no effect on the compliance obligations of Subpart W sources. Therefore, USEPA could choose to conduct separate rulemakings on Subpart U and Subpart W. Thus, all four subparts of Part 217 are independent from each other, and for example USEPA may choose to conduct rulemaking on Subpart X separately from its rulemaking on other subparts of Part 217.

From USEPA's perspective, Subpart X is essentially no more or less independent from Subparts U and W than it is from the NO[X] control regulations in other Eastern states. While Illinois' focus presumably was on providing an alternative set of allowances for Illinois sources, these allowances would also be available for use by sources in other states subject to the NO[X] SIP Call. Thus, rulemaking on Subpart X is no more a prerequisite to approving and implementing Subparts U and W than it is to approving and implementing any other state's NO[X] control regulations.

The remaining element of IERG's comment questions whether USEPA may reach a conclusion on Illinois satisfying the requirements of the NO[X] SIP Call before completing rulemaking on the entire submittal, in particular before completing rulemaking on Subpart X. USEPA continues to believe that it can judge now whether Illinois has satisfied the existing NO[X] SIP Call requirements. Through the rules of Subparts T, U, and W, Illinois has limited emissions from cement kilns, industrial boilers and turbines, and electricity generating units, respectively. Illinois submitted a budget demonstration showing that these three subparts of the Part 217 rules are adequate to assure that NO[X] emissions in Illinois remain within levels currently budgeted for the State under the NO[X] SIP Call. USEPA proposed to approve this demonstration.

The central requirement of the NO[X] SIP Call is for each affected state to assure that NO[X] emissions do not exceed the budgeted levels. Illinois' budget demonstration shows that the requirements of Subparts T, U, and W assure achievement of these budgeted [*56452] NO[X] emission levels in Illinois. That is, even before completing rulemaking on Subpart X, USEPA's rulemaking on Subparts T, U, and W suffice to satisfy fully the existing requirements of the NO[X] SIP Call.

As a point of clarification, the existing requirements of the NO[X] SIP Call are less stringent than USEPA expects these requirements to become. The difference principally reflects a court remand on the portion of the NO[X] SIP Call pertaining to control of stationary internal combustion engines. USEPA labels the existing requirements as Phase I of the NO[X] SIP Call, which USEPA expects to amend with Phase II budgets reflecting presumed control of internal combustion engines. USEPA is only evaluating the Illinois regulations against the existing, Phase I requirements; USEPA will obviously evaluate Illinois' regulations with respect to Phase II requirements only after USEPA establishes those requirements.

USEPA's approach for judging satisfaction of existing NO[X] SIP Call requirements is the same approach it is using to judge the contribution of these rules toward attaining the ozone standard. Subparts T, U, and W each achieve a quantifiable reduction in NO[X] emissions. For purposes of the NO[X] SIP Call, USEPA must judge whether the collective reductions suffice to assure that Illinois' NO[X] emissions budget is achieved. For purposes of the attainment demonstration, USEPA must judge whether the collective reductions suffice to assure attainment. The intention of Subpart X is neither to increase nor to decrease NO[X] emissions in Illinois. Therefore, for both the NO[X] SIP Call and the attainment demonstration, USEPA may judge whether the applicable requirements are satisfied without needing first to evaluate Subpart X.

3. LTV Steel

Comment: LTV Steel agrees in general with amending Illinois' NO[X] emissions budget to add LTV Steel's Boiler 4B to the list of sources subject to allowance holding requirements. However, LTV Steel believes that a larger quantity of emissions should be budgeted for this boiler. Since Illinois is issuing allowances to each source according to its budgeted emissions, LTV Steel's recommendation is expressed in terms of the number of allowances to be issued to LTV Steel for this boiler.

LTV Steel provides data showing that the proposed budgeted emissions for Boiler 4B "is equivalent to an emission rate of less than 0.146 lb/mmBTU". LTV Steel objects that the budgeted emission rate for Boiler 4B "should not be more stringent than the [0.15 lb/mmBTU emission rate budgeted for electricity generating units]".

LTV Steel quotes from USEPA's NO[X] SIP Call rulemaking of October 27, 1998, as follows: "EPA determined the aggregate emission levels for large non-electric generating units in each State budget based

upon a 60 percent reduction * * *. The 60 percent reduction results in an average emission rate across the region of 0.17 lbs/mmBTU for large non-electric generating units. Therefore, initial unadjusted allocations to existing large non-electric generating units would be based on actual heat input data (in mmBTU) for the units multiplied by an emission rate of 0.17 lb/mmBTU." LTV Steel also provides a similar quote from USEPA's rulemaking of January 18, 2000. LTV Steel concludes, based on the 1995 heat input for its Boiler 4B, that the unit should receive allowances for 70 tons per ozone season rather than 60.

Response: USEPA and LTV Steel agree on most points: we agree that Boiler 4B should be subject to requirements as a large boiler, we agree that controlled emissions for this boiler should be calculated consistently with other units, and we agree that 1995 conditions (projected to 2007) should be the basis for the calculations. However, we do not agree on whether the emissions budget for LTV Steel's boiler should be calculated at 0.17 lb/mmBTU or at 60 percent control.

LTV Steel's Boiler 4B burns a combination of natural gas and coke oven gas. Using emissions data collected at the facility, Illinois EPA and USEPA estimate that 60 percent control of this boiler would yield an emission factor slightly below 0.15 lb/mmBTU.

USEPA is addressing emissions budgeted for this unit and not the allocation for the unit; Illinois then has latitude in how it distributes allowance allocations. This distinction appears moot in Illinois because the state's rules provide allowances according to each source's portion of the budget (minus a new source set-aside), but the distinction is key to understanding the statement in USEPA's rulemaking. The quoted statement clearly says that emission budgets for large non-electricity generating units reflect 60 percent control. As quoted by LTV Steel, the rulemaking notice explains that this control level for industrial boilers and turbines on average reflects an emission factor of 0.17 lbs/mmBTU, so a state could at least approximately achieve the budgeted NO[X] emission level by issuing allocations at 0.17 lbs/mmBTU. However, states also have the option to allocate allowances according to the 60 percent control level, which is the option Illinois has chosen. Regardless of how the state chooses to distribute allowances, USEPA must calculate the budget adjustment for LTV Steel's Boiler 4B according to 60 percent control.

Illinois' rules provide an allowance allocation to LTV Steel according to this budget adjustment. Therefore, LTV Steel must have an allocation for Boiler 4B that reflects 60 percent control.

The second rulemaking quoted by LTV Steel is USEPA's rulemaking on petitions under Clean Air Act section 126. Besides the fact that this rulemaking does not apply directly to Illinois, the section 126 context differs from the NO[X] SIP Call context in a way that makes the quoted statement irrelevant. In its section 126 action, USEPA was responsible for determining allowance allocations. USEPA chose here to issue allowances according to an average emission level, but this choice in no way requires states to use the same approach in allocating allowances under the NO[X] SIP Call. In addition, the quoted statements suggest that had USEPA found 60 percent control to reflect a lower average emission rate, USEPA would have allocated allowances according to that lower rate.

As noted in the proposed rulemaking on Illinois' rules, USEPA has provided detailed budget calculations on its web site, at <ftp://ftp.epa.gov/EmisInventory/NOxSIPCall - Mar2 - 2000/>. The spreadsheet for Illinois available at this site clearly calculates the emissions budget for industrial boilers and turbines on the basis of 60 percent control. Thus, USEPA is adjusting Illinois' budget to include LTV Steel's Boiler 4B at a 60 percent control level, which under Illinois' rules will result in LTV Steel receiving an allocation for 60 tons of allowances for each ozone season.

Comment: LTV Steel requested confirmation that the deadline for installing and operating continuous emissions monitoring has been delayed to May 31, 2003.

Response: Illinois' rule at section 217.456(c) subjects sources such as LTV Steel to the monitoring requirements of 40 CFR 96 Subpart H. (Electricity generating units are similarly subject to the 40 CFR 96 Subpart H requirements pursuant to section 217.756(c).) As promulgated, 40 CFR 96.70 requires that moni-

toring begin at least by May 1, 2002, and earlier if the source seeks early reduction credits. However, a decision by the Court of Appeals for the District of Columbia Circuit has delayed the emissions compliance deadline of [*56453] the NO[X] SIP Call by one year plus one month.

While 40 CFR 96 Subpart H has not been expressly modified, USEPA recognizes that the change in the compliance deadline warrants a delay in the deadline for emissions monitoring for sources not seeking early reduction credits. The purposes of this monitoring are best achieved by starting at the beginning of the defined ozone season rather than one month later. Therefore, USEPA believes that the Court of Appeals decision warrants a one year delay but not a thirteen month delay in the commencement of emissions monitoring for sources not seeking early reduction credits.

In summary, USEPA affirms that installation and operation of continuous emissions monitoring may be delayed until May 1, 2003, for sources that are not seeking early reduction credits.

III. What Action Is USEPA Taking?

USEPA is taking final action approving Subparts T and U of Part 217 of Title 35 of the Illinois Administrative Code, regulating NO[X] emissions from cement kilns and industrial boilers and turbines, respectively. This approval reflects selected rule interpretations described in the notice of proposed rulemaking. USEPA is making two minor amendments to the budget as requested by Illinois, adding a boiler owned by LTV Steel and deleting a boiler owned by University of Illinois from the inventory of large boilers and turbines. By separate action today, USEPA is approving Subpart W, regulating NO[X] emissions from electricity generating units.

Illinois' budget demonstration shows that these three sets of regulations provide sufficient limitations on NO[X] emissions in the state to satisfy the existing requirements of USEPA's NO[X] SIP Call. USEPA is approving this budget demonstration. With this approval and the approval of the three relevant sets of regulations, USEPA concludes that Illinois has fully satisfied current ("Phase I") requirements under the NO[X] SIP Call.

USEPA wishes to clarify its views on one aspect of compliance accounting under Illinois' rule. USEPA's administration of a multi-state trading program requires that the states have consistent compliance accounting procedures. USEPA will be using procedures in which compliance is assessed on a unit-by-unit basis. Illinois' rules for industrial boilers and turbines are somewhat unclear on this point: multiple rule paragraphs indicate that compliance is assessed on a unit-by-unit basis, and yet Section 217.456 (d)(1) suggests that the source may be in compliance if the source has adequate allowances on a source-wide basis.

Illinois provided clarification on this point in a letter to USEPA dated September 20, 2001. Illinois specified that its rules must be interpreted to require compliance on a unit-by-unit basis. Consequently, if a source holds a sufficient total number of allowances but misdistributes these allowances such that one or more unit accounts (supplemented by available allowances from the source's overdraft account) hold insufficient allowances, those units will be in violation. Each violating unit will be subject to the 3 to 1 deduction of allowances pursuant to Illinois' section 217.456 (f)(5) and USEPA's *40 CFR 96.54 (d)(1)*. USEPA concurs with and approves this interpretation of Illinois' rules.

The regulations approved here, along with the regulations governing electricity generating units, are an important part of Illinois' attainment demonstration for the Chicago area. USEPA finds these regulations creditable for this purpose.

USEPA is also approving all the definitions of Part 211 submitted in conjunction with the Subpart T and Subpart U submittals. These part 211 rules provide a variety of definitions of terms used in part 217 that are generally quite similar to USEPA's recommended definitions. These rules also include a definition of the term "source" that brings that definition into conformance with state law and USEPA recommendations.

Because USEPA has not approved Subpart X, allowances may not be issued for sources that voluntarily reduce NO[X] emissions pursuant to these rules. In addition, provisions in Subpart U implying creditability of emission reductions pursuant to Subpart X are inoperative prior to approval of Subpart X.

In order to fulfill its obligation for rulemaking on the entire Illinois submittal, USEPA must conduct rulemaking on Subpart X. While USEPA is taking no action today on Subpart X, USEPA intends to conduct rulemaking on Subpart X in the near future.

USEPA has reviewed the completeness of Illinois' submittals of February 23, 2001, April 9, 2001, May 1, 2001, and June 18, 2001. USEPA concludes that these submittals are complete and represent a complete response to Phase I of USEPA's NO[X] SIP Call. Consequently, USEPA concludes that Illinois has remedied the prior deficiency identified on December 26, 2000 (*65 FR 81366*), namely Illinois' prior failure to submit a SIP in response to the NO[X] SIP Call. USEPA's December 2000 finding started an 18-month clock for the mandatory imposition of sanctions and the obligation for USEPA to promulgate a FIP within 24 months. Today's action terminates both the sanctions clock and USEPA's FIP obligation.

IV. Administrative Requirements

Under Executive Order 12866 (*58 FR 51735*, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (*66 FR 28355*, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (*65 FR 67249*, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (*64 FR 43255*, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (*62 FR 19885*, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior [*56454] existing requirement for the State to use voluntary consensus standards (VCS), USEPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (*15 U.S.C. 272* note) do not apply. As required by section 3 of Executive Order 12988 (*61 FR 4729*, February 7, 1996), in issuing this rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (*53 FR 8859*, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (*44 U.S.C. 3501 et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective December 10, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

Jo Lynn Traub,

Acting Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52--[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O--Illinois

2. Section 52.720 is amended by adding paragraph (c)(159), to read as follows:

§ 52.720 -- Identification of plan.

* * * * *

(c) * * *

(159) On April 9, 2001, David Kolaz, Chief, Bureau of Air, Illinois Environmental Protection Agency, submitted rules regulating NO[X] emissions from cement kilns. On May 1, 2001, Mr. Kolaz submitted rules regulating NO[X] emissions from industrial boilers and turbines and requesting two minor revisions to the Illinois NO[X] emissions budget. On June 18, 2001, Mr. Kolaz submitted a demonstration that Illinois' regulations were sufficient to assure that NO[X] emissions in Illinois would be reduced to the level budgeted for the state by USEPA. On September 20, 2001, Mr. Kolaz sent a letter clarifying that Illinois' rules for industrial boilers and turbines require compliance on a unit-by-unit basis.

(i) Incorporation by reference.

(A) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 211, Definitions, sections 211.955, 211.960, 211.1120, 211.3483, 211.3485, 211.3487, 211.3780, 211.5015, and 211.5020, published at 25 Ill. Reg. 4582, effective March 15, 2001.

(B) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart A, Section 217.104, Incorporations by Reference, published at 25 Ill. Reg. 4597, effective March 15, 2001.

(C) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart T, Cement Kilns, sections 217.400, 217.400, 217.402, 217.404, 217.406, 217.408, and 217.410, published at 25 Ill. Reg. 4597, effective March 15, 2001.

(D) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 211, Sections 211.4067 and 211.6130, published at 25 Ill. Reg. 5900, effective April 17, 2001.

(E) Illinois Administrative Code, Title 35, Subtitle B, Chapter I, subchapter c, Part 217, Subpart U, NO[X] Control and Trading Program for Specified NO[X] Generating Units, sections 217.450, 217.452, 217.454, 217.456, 217.458, 217.460, 217.462, 217.464, 217.466, 217.468, 217.470, 217.472, 217.474, 217.476, 217.478, 217.480 and 217.482, published at 25 Ill. Reg. 5914, effective April 17, 2001.

(ii) Additional material.

(A) Letter dated June 18, 2001, from David Kolaz, Illinois Environmental Protection Agency, to Cheryl Newton, United States Environmental Protection Agency.

(B) Letter dated September 20, 2001, from David Kolaz, Illinois Environmental Protection Agency, to Bharat Mathur, United States Environmental Protection Agency.

3. Section 52.726 is amended by adding paragraph (cc) to read as follows:

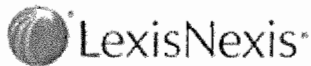
§ 52.726 -- Control strategy: ozone.

* * * * *

(cc) Approval-Illinois has adopted and USEPA has approved sufficient NO[X] emission regulations to assure that it will achieve the level of NO[X] emissions budgeted for the State by USEPA. USEPA has made two minor budget revisions requested by Illinois, adding a boiler owned by LTV Steel and deleting a boiler owned by the University of Illinois from the inventory of large NO[X] sources.

[FR Doc. 01-27933 Filed 11-7-01; 8:45 am]

BILLING CODE 6560-50-P



LEXSEE 66 FR 34382

FEDERAL REGISTER

Vol. 66, No. 125

Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 52

[IL208-1, IL209-1; FRL-7003-8]

Approval and Promulgation of Implementation Plans; Illinois NO[X] Regulations

66 FR 34382

DATE: Thursday, June 28, 2001

ACTION: Proposed rule.

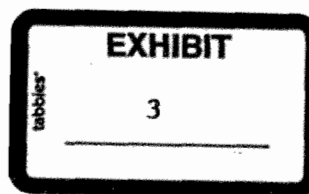
To view the next page, type .np* TRANSMIT.
To view a specific page, transmit p* and the page number, e.g. p*1

[*34382]

SUMMARY: On April 9, 2001, and May 1, 2001, Illinois submitted adopted rules to reduce emissions of nitrogen oxides (NO[X]) from cement kilns and from industrial boilers and turbines, respectively. Illinois adopted these rules to help meet the NO[X] emission budget as required under USEPA's NO[X] State Implementation Plan (SIP) Call as well as to help attain the 1-hour ozone standard in the Chicago area.

USEPA proposes to approve these two sets of rules. These rules are similar to and satisfy the requirements of USEPA's sample rules. Illinois' rules include language mandated by the Illinois legislature making the compliance deadline contingent on Federal enforceability of similar rules in other nearby states. However, the legislature has recently reversed its prior mandate and established a fixed compliance deadline of May 31, 2004.

On June 18, 2001, Illinois submitted a budget demonstration, reflecting the impact of the rules on cement kilns and industrial boilers and turbines in conjunction with previously submitted rules on electricity generating units. The submittal justifies two minor inventory revisions, adding one source and deleting another source from the list of regulated industrial sources. Illinois' submittal shows that its rules will achieve the revised budget of acceptable 2007 NO[X] emission levels. USEPA concurs with the inventory revisions and proposes to approve Illinois' budget demonstration.



USEPA has previously proposed to approve Illinois' rules for electricity generating units, provided Illinois established a fixed compliance deadline. With today's action, USEPA has proposed to approve all of the regulations needed to achieve the budgeted 2007 NO[X] emission levels and to meet USEPA's associated requirements. Therefore, USEPA proposes to conclude that Illinois has satisfied all requirements of USEPA's NO[X] SIP Call.

DATES: Written comments on this proposed rule must be received on or before July 30, 2001.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at 312-886-6067, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, *summerhays.john@epa.gov*, 312-886-6067.

SUPPLEMENTARY INFORMATION: In the following text, the terms "we," "us," or "our" refer to USEPA. This notice is organized according to the following table of contents:

I. Background

- A. What is USEPA's "NO[X] SIP Call"?
- B. What requirements must Illinois meet?

II. Summary of Illinois Submittals

- A. Overview of Pertinent Submittals
 1. What are the elements of Illinois' NO[X] emission control program?
 2. What submittals has Illinois made?
 3. What are USEPA's plans for rulemaking on Subpart X?
- B. Cement Kiln Rules (Subpart T)
 1. When was the cement kiln NO[X] emission control rule submitted to USEPA?
 2. When must sources reduce emissions?
 3. What are the basic components of the State's rule?
 4. Will affected sources be allowed to participate in the NO[X] emissions trading program?
 5. What public review opportunities were provided?
- C. Industrial Boiler Rules (Subpart U)
 1. What do the industrial boiler rules require?
 2. What sources are subject to these rules?
 3. What are the special provisions of these rules?

4. How much emission reduction do these rules achieve?

D. Budget Demonstration

III. USEPA Review

A. Cement Kiln Rules (Subpart T)

1. What guidance did USEPA use to evaluate the State's rule?

2. Can USEPA approve Illinois' cement kiln rules?

B. Industrial Boiler Rules (Subpart U)

1. Can USEPA approve the general approach?

2. Can USEPA approve the new source set-aside features?

3. Can USEPA approve the early reduction credit features?

4. Can USEPA approve the low emitter exemption features?

5. Can USEPA approve the opt-in features?

6. In summary, can USEPA approve Illinois' industrial boiler rules?

C. Budget Demonstration

1. Does USEPA accept Illinois' recommended budget revisions?

2. Do Illinois' rules satisfy USEPA's budget?

IV. Proposed Action

V. Administrative Requirements

I. Background

A. *What Is USEPA's "NO[X] SIP Call"?*

On October 27, 1998, the USEPA promulgated a regulation known as the NO[X] SIP Call for numerous States, including the State of Illinois. The NO[X] SIP Call requires the subject States to develop NO[X] emission control regulations sufficient to provide for a prescribed NO[X] emission budget in 2007.

Preceding the promulgation of USEPA's NO[X] SIP Call was extensive discussions of transport of ozone in the Eastern United States. The Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to a March 2, 1995 USEPA memorandum, the Ozone Transport Assessment Group (OTAG) was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was a partnership among USEPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups. OTAG was given the responsibility of conducting the two years of analyses envisioned in the March 2, 1995 USEPA memorandum.

OTAG conducted a number of regional ozone data analyses and [*34383] regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the USEPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO[X] emis-

sion reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, USEPA issued the NO[X] SIP Call rule on October 27, 1998. *63 FR 57356*.

In the NO[X] SIP Call, USEPA determined that sources and emitting activities in 23 jurisdictions n1 emit NO[X] in amounts that "significantly contribute" to ozone nonattainment or interfere with maintenance of the 1-hour ozone national ambient air quality standards (NAAQS) in one or more downwind areas in violation of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I). USEPA identified NO[X] emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO[X] emission budgets for each affected jurisdiction for 2007 based on the possible cost-effective NO[X] emission reductions.

n1 Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

The source sectors include nonroad mobile, highway mobile, area, electricity generating units (EGUs), and major non-EGU stationary point sources. EGUs include stationary boilers and turbines that generate at least some electricity, even if they also generate steam for industrial processes. Non-EGUs include other large stationary boilers and turbines, typically for the purpose of generating steam for industrial processes.

USEPA established recommended NO[X] emissions caps for large EGUs (potentially generating more than 25 megawatts) and for large non-EGUs (minimum design heat input of 250 mmBTU per hour). USEPA determined that significant NO[X] reductions using cost-effective measures could be obtained as follows: application of a 0.15 pounds NO[X]/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO[X] emissions from large non-EGUs; a 30 percent reduction of NO[X] emissions from large cement kilns; and a 90 percent reduction of NO[X] emissions from large stationary internal combustion engines. The 2007 state-wide NO[X] emission budgets established by jurisdiction were based, in part, by assuming these levels of NO[X] emission controls coupled with NO[X] emissions projected by source sector to 2007.

Although the state-wide NO[X] emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO[X] SIP Call allows each State to determine what measures it will choose to meet the state-wide NO[X] emission budgets. It does not require the States to adopt the specific NO[X] emission rates assumed by the USEPA in establishing the NO[X] emission budgets. The NO[X] SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO[X] state-wide emission budget. The NO[X] SIP Call encourages the States to adopt a NO[X] cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO[X] trading program that the USEPA will administer for the States. If States choose to participate in the national trading program, the States must submit SIPs that conform to the trading program requirements in the NO[X] SIP Call.

B. What Requirements Must Illinois Meet?

The State of Illinois has the primary responsibility under the Clean Air Act for ensuring that Illinois meets the ozone air quality standards and is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for meeting the NO[X] emissions budget. The SIP for ozone must meet the ozone transport SIP Call requirements, must be adopted pursuant to notice and comment rule-making, and must be submitted to the USEPA for approval.

These NO[X] emission reductions will address ozone transport in the area of the country primarily east of the Mississippi River. USEPA promulgated the NO[X] SIP Call pursuant to the requirements of CAA section 110(a)(2)(D) and our authority under CAA section 110(k). Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattain-

ment in, or interfere with maintenance of attainment of a standard by any other State with respect to any NAAQS.

Pursuant to its authority under section 110(k)(5), USEPA concluded that the SIPs for Illinois and other states are substantially inadequate to prohibit NO[X] emissions that significantly contribute to ozone nonattainment in downwind states. Therefore, Illinois must submit SIP revisions that address this inadequacy.

USEPA has published a model rule for control of NO[X] emissions from boilers and turbines. This model rule, codified at Title 40 of the Code of Federal Regulations Part 96 (40 CFR part 96), reflects USEPA's recommendations for the general design of the necessary NO[X] emission control programs as well as detailed recommendations for specific program features. Similarly, at 63 FR 56393 (October 21, 1998), USEPA has published a proposed Federal implementation plan including rules regulating cement kilns, which serve as sample rules for this source type. USEPA recommends the cost-effective levels of control noted above. The budget that USEPA established for states reflects these control levels. USEPA further recommends that states take the necessary steps to allow their sources to participate in a multi-state NO[X] emissions trading program that USEPA will run. While USEPA offers flexibility to states on various elements of program design, particularly in the distribution of projected emission reductions, USEPA can offer more streamlined approval of programs that more closely follow USEPA's model rule.

II. Summary of Illinois Submittals

A. Overview of Pertinent Submittals

1. What Are the Elements of Illinois' NO[X] Emission Control Program?

Illinois has adopted a control strategy that closely matches the control strategy that USEPA assumed in determining NO[X] emission budgets. Like USEPA's assumed strategy, Illinois is regulating emissions from large utility sources, from large cement kilns, and from large industrial boilers and turbines. Illinois requires cement kilns to meet an emission factor limitation or other equivalent limitation corresponding to 30 percent emission control. Illinois requires utility sources on average to meet a limitation of 0.15 pounds of NO[X] emissions per mMBTU and requires industrial boilers on average to achieve 60 percent emissions control.

Illinois provides for the utility and industrial boiler sources to participate in the trading program that USEPA is running. Thus, these sources are not subject to specific emission limitations. Instead, USEPA would issue allowances to these sources in amounts equivalent [*34384] to the budgeted emissions level, and USEPA and Illinois would require each source to emit no more tons than the number of allowances it holds. One option a source would have is to emit at or below the budgeted level and accommodate these emissions with the issued allowances. Another option is to emit more than the budgeted amount and accommodate these emissions by purchasing allowances from a second source that has excess allowances due to a corresponding degree of control below its budgeted level. Under either option, and under any of the variants of these options permissible in Illinois' rules, the net effect is designed to be achievement of the targeted emissions reductions by some combination of sources in the program.

2. What Submittals Has Illinois Made?

Illinois divided its NO[X] emission control program into several components, each submitted separately. On July 18, 2000, Illinois submitted a draft version of subpart W of part 217 of the Illinois Administrative Code, regulating electricity generating units. Illinois submitted a fully adopted version of this rule on February 23, 2001. On April 9, 2001, Illinois submitted an adopted subpart T of part 217, regulating cement kilns. On May 1, 2001, Illinois submitted adopted subpart U, regulating industrial boilers and turbines.

USEPA proposed rulemaking on the submittal for electricity generating units on August 31, 2000, at 65 FR 52467. Today's notice proposes rulemaking on the submittals for cement kilns and industrial boilers.

These submittals constitute the full set of rules that Illinois has adopted to satisfy the requirements of USEPA's NO[X] SIP Call. USEPA additionally requires each state to submit a demonstration that its regulations are adequate to attain the state NO[X] emissions budget mandated by USEPA. Illinois submitted its budget demonstration on June 18, 2001. USEPA is proposing rulemaking on this budget demonstration as part of this notice. More generally, USEPA is proposing action on whether Illinois has fully satisfied USEPA's NO[X] SIP Call.

3. What are USEPA's Plans for Rulemaking on Subpart X?

The submittal of May 1, 2001, also includes adopted rules of subpart X of part 217, entitled Voluntary NO[X] Emissions Reduction Program. These rules authorize issuance of allowances for NO[X] emission reductions at sources not required to reduce these emissions. Sources seeking such allowances must operate continuous emission monitors in accordance with USEPA's regulations at 40 CFR part 60. Subpart X is intended to provide flexibility for sources not part of the core group of sources to be subject to Illinois' NO[X] emission control regulations to achieve reductions which can in effect substitute for reductions at facilities that must be subject to Illinois' regulations.

USEPA views subpart X as a supplement to Illinois' NO[X] emissions regulations and not a direct set of emission reduction requirements needed to achieve the emissions control mandated by USEPA. Subpart X allows a redistribution of the targeted emission reductions but is intended to have no effect on the net emission reductions achieved.

USEPA is under court order to complete rulemaking on the ozone attainment demonstration for the Chicago area by October 15, 2001. The NO[X] emission reductions required by subparts T, U, and W are an important part of the Chicago area attainment demonstration that Illinois has submitted. Therefore, USEPA must also complete rulemaking on these NO[X] emission reduction regulations by October 15, 2001. Because these same three subparts are also designed to be sufficient to satisfy USEPA's NO[X] emission budget requirements, USEPA intends to complete rulemaking on Illinois' budget demonstration in the same time-frame.

USEPA views subpart X as not being an element of Illinois' attainment demonstration, such that rulemaking on this subpart need not occur by October 15, 2001. USEPA believes the best approach for satisfying this deadline is to conduct separate rulemaking on subpart X. Also, because the features of subpart X are not included in USEPA's model rule, USEPA cannot conduct streamlined rulemaking on subpart X. Therefore, USEPA wishes to conduct streamlined rulemaking on the Illinois rules needed to satisfy USEPA's NO[X] SIP Call without delaying the rulemaking to address subpart X.

USEPA provides flexibility for states to adopt different mixes of control strategies, to address different mixes of sources and to impose differing levels of control stringency. Most cases of applying this flexibility are to issue a different distribution of allowances (reflecting different distribution of control levels or growth rates) or to impose specific control requirements on a specific alternative source type. Conceptually, subpart X is a reasonable extension of this flexibility, to allow the reductions dictated in subparts T, U, and W to be replaced with reductions from other, as yet unidentified sources. Furthermore, subpart X is in many respects similar to the opt-in provisions that USEPA suggests in its model rule. USEPA anticipates proposing rulemaking on subpart X in the near future.

B. Cement Kiln Rules (Subpart T)

1. When Was the Cement Kiln NO[X] Emission Control Rule Submitted to the USEPA?

Illinois EPA submitted to USEPA, additional portions of the State's NO[X] emission control plan in a letter dated April 9, 2001. The letter contained rules adopted by the Illinois Pollution Control Board (IPCB) as requested amendments to the SIP. The submittal included: Subpart A: General Provisions, Subpart B:

Definitions and Subpart T: Cement Kiln. The final State rule was published in the Illinois Register, Volume 25, Issue 13, pages 4582-4608, dated March 30, 2001. This version in the Illinois Register differs from that submitted with the SIP revision request only in that the numbering scheme in subpart T was changed from 217.6xx in the final package of rules sent to the IPCB (and in the submittal to USEPA) to 217.4xx in the official Illinois Register publication. This is not a significant issue but, highlighted only for clarity.

2. When Must Sources Reduce Emissions?

An important element of Illinois' rules is the date by which sources must comply with the applicable requirements. Section 217.402(b) of subpart T as submitted by Illinois states that sources are subject to the requirements of subpart T only after other nearby states become subject to comparable, federally enforceable NO[X] emission limits. Similar language is in Illinois' rules for utility sources (subpart W), and USEPA proposed to approve those rules only if Illinois made the allowance holding/emission reduction requirements effective in May 2004 without respect to the status of requirements in nearby States. (Cf. 65 FR 52975, dated August 31, 2000.)

The Illinois legislature has passed legislation overriding the contingency clause in these rules and requiring compliance by May 31, 2004. This is the necessary compliance deadline pursuant to the resolution of a lawsuit regarding USEPA's NO[X] SIP Call. USEPA expects the governor to sign this legislation soon. Once the governor signs this legislation, Illinois will have addressed the concern identified in USEPA's prior rule-making and [*34385] established an appropriate compliance deadline for these rules.

3. What Are the Basic Components of the State's Rule?

Basic components of the rule are included in Table 1.

Table 1.--40 CFR Parts and Sections Incorporated
By Reference in Illinois' Cement Kiln NO[X] Rule

State subpart	State section	Comment
A	217.104(a)	Incorporation by reference (IBR) of 40 CFR 60, Appendix A, Method 7.
	217.104(b)	IBR of Alternative Control Techniques Document, NO[X] Emissions from Cement Manufacturing.
	217.104(c)	IBR of AP-42, Compilation of Air Emission Factors, Volume 1, Section 11.6, Portland Cement Manufacturing.
	217.104(d)	IBR of 40 CFR 60.13
	217.104(e)	IBR of 40 CFR 60, Appendix A, Methods 7, 7A, 7C, 7D, and 7E.
T	217.400	Applicability, lists the types and sizes of kilns which are covered in the rule.
	217.402	Control Requirements. Lists dates, type of kiln, and NO[X] emission limits. Includes language linking effective dates to NO[X] SIPs in other states.
	217.404	Testing Requirements. References 40 CFR 60, Appendix A, Methods 7, 7A, 7C, 7D, or 7E.
	217.406	Monitoring Requirements.
	217.408	Reporting Requirements.
	217.410	Recordkeeping Requirements.

Subpart T applies to all Cement Kilns of the sizes noted in Table 2.

Table 2.--Equipment Subject to
the Illinois Cement Kiln Rule

Item	Process name	Process rate
1	Long dry kilns	12 tons/hour.
2	Long wet kilns	10 tons/hour.
3	Pre-heater kilns	16 tons/hour.
4	Pre-heater/pre-calciner kilns	22 tons/hour.

The rule applies to all noted sources in the State of Illinois. Equipment with process rates equal to or greater than the rates listed in Table 2, are subject to the requirements of the State's subpart T. There are three sources totaling four units potentially impacted by the cement kiln rule. Using information available to the State, the Illinois EPA applied regulatory control efficiency of 30 percent to the projected 2007 seasonal NO[X] emissions to obtain the 2007 seasonal NO[X] budget for the kilns. The required control on these kilns will reduce the 2007 base emissions to a control level 2,851 tons per control period as a result of emission controls beginning May 31, 2004.

Control requirements are listed in section 217.402 of the State's rule. Section 217.402 identifies a number of emission rates and technologies by which standards can be met. The rule specifies an emission rate limit based on type of kiln (see Table 2) or the use of emission factors based on a specified method. The rule also allows the use of an alternate emission standard for the kiln based on a demonstration that the alternative standard is justifiable. Illinois EPA established the following NO[X] emission rate limits for the process kilns listed in Table 3.

Table 3.--Cement Kiln Emission Limits for Kilns
which Began Operation Prior to January 1, 1996.

Item	Process	Emission limit #/ton clinker
1	Long dry kilns	5.1 # of NO[X]/ ton of clinker.
2	Long wet kilns	6.0 # of NO[X]/ ton of clinker.
3	Pre-heater kilns	3.8 # of NO[X]/ ton of clinker.
4	Pre-heater/pre-calciner	2.8 # of NO[X]/ ton of clinker.

The State allows other options to control emissions from kilns. As one option, after May 30, 2004, the kiln shall not operate during the control period unless the kiln is operated with a low- NO[X] burner or a mid-kiln firing system for kilns which began operation before January 1, 1996. There is also an option under which the kilns would be required to achieve a 30 percent or greater reduction from its uncontrolled baseline.

USEPA evaluated whether two provisions posed "director's discretion" concerns, i.e. whether these provisions authorized only the state to make significant judgments without USEPA having independent review authority. First, section 217.402 (a)(5) authorizes the state to grant alternative emission standards. The state may issue such standards if the source demonstrates that 30 percent control would impose an "unreasonable cost of control" or installation of such control is a "physical impossibility." These terms are undefined.

[*34386]

However, section 217.402(a)(5) also states that alternative standards "shall be effective only when included as a federally enforceable condition in a permit approved by USEPA or approved as a SIP revision." Furthermore, the rule states that alternative standards or alternative compliance deadlines "shall be granted by the Board to the extent consistent with federal law." These provisions clearly require independent USEPA review and approval. Therefore, USEPA does not find this provision to inappropriately remove USEPA from involvement in judging whether to grant alternative emission standards.

The second feature involving state judgment relates to methods for determining emissions. Section 217.402(a)(3)(B) requires sources to determine emissions using (i) appropriate emission factors, (ii) Method 7, or (iii) alternative methods approved by the State. The third option requires the alternative to be established in a federally enforceable permit. Because state issuance of federally enforceable permits require USEPA review and typically allow USEPA to veto any permit to which it objects, USEPA believes it has adequate authority to assure that appropriate emissions determining methods are used.

Sources must submit a compliance plan which must:

1. Identify the specific operating conditions to be monitored and the correlation between the operating conditions and NO[X] emission rates;

2. Include the data and information that the owner or operator used to identify the correlation between NO[X] emission rates and these operating conditions;

3. Identify how the owner or operator will monitor these operating conditions on an hourly or other basis, and identify the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating conditions will be representative and accurate.

4. If operating a low-NO[X] burner or mid-kiln firing system, the plan must include only monitoring parameters indicated in the manufacturer's specifications and recommendations for the low-NO[X] burner or mid-kiln firing system as approved by the IEPA.

5. If the owner or operator elects to monitor NO[X] emissions using a continuous emissions monitoring system, the owner or operator must submit a monitoring plan subject to the approval by the IEPA.

4. Will Affected Sources Be Allowed to Participate in a NO[X] Emissions Trading Program?

This rule allows the owner or operator to obtain approval from the Illinois EPA and the USEPA to participate in the NO[X] Trading Program. Participation will be effective upon issuance of a permit containing all necessary federally enforceable permit conditions addressing the kiln's participation in the Federal NO[X] Trading Program following the requirements of 40 CFR part 96. A source which participates in the trading program is not subject to subpart T of the State's rule except for the requirement to submit an initial compliance report.

5. What Public Review Opportunities Were Provided?

The IEPA filed the subpart T Cement Kiln rule with the IPCB on August 21, 2000. The first notice of the rule was published in the Illinois Register on September 8, 2000. Hearings were held on October 3, 2000, in Chicago, and November 3, 2000 in Springfield, Illinois. A second notice was issued on December 21, 2000. Illinois issued a certification of no objections and second notice changes on February 21, 2001. On March 1, 2001, the IPCB issued its opinion and final order and adopted the rule. The final rule was published in the Illinois Register on March 30, 2001.

C. Industrial Boiler Rules (Subpart U)

Subpart U is quite similar to USEPA's model rule as given in 40 CFR part 96. The central feature is issuance of allowances to subject sources in an amount equivalent to significantly reduced emissions and a requirement to hold allowances equivalent to actual emissions levels. Subpart U also has several special provisions similar to USEPA's model rule, including provisions for a new source set-aside, for early reduction credits, for sources obtaining low emitter status, and for sources to opt into the program. The following summary of Illinois' industrial boiler rules describes the program's general features, discusses the sources subject to the rule, discusses the program's special features, and discusses the emission reductions anticipated from this program.

1. What Do the Industrial Boiler Rules Require?

Starting in 2004, industrial boilers and turbines must hold allowances equal to their emissions during the ozone season, defined here as May 1 to September 30. (As part of the resolution of a lawsuit challenging USEPA's rule, the applicable period for 2004, unlike the applicable period for subsequent years, excludes May 1 to May 30.) Each year, sources are issued a number of allowances as specified in appendix E to part 217. These sources receive allowances equivalent to 60 percent control. Sources have the option to avoid trading and reduce emissions to their allowance level. Alternatively, sources may alter their required emissions level by buying or selling allowances, presumably with other sources that reduced their own emissions to below or above their own allowance issuance levels, respectively.

As with the cement kiln and utility boiler programs, many elements of Illinois' industrial boiler program directly apply provisions promulgated by USEPA. Illinois applies the same applicability criteria as USEPA applied in assessing its emissions budget. Subject sources must satisfy the continuous emissions monitoring requirements set in 40 CFR part 96 and specified in 40 CFR part 75. Sources that emit in excess of their allowance holdings are subject to the enforcement provisions of *40 CFR 96.54*, including a deduction of three allowances per ton of excess emissions and other potential enforcement actions. The process for tracking allowances and recording allowance transfers is the process given in 40 CFR part 96, subparts F and G, respectively. Sources must establish an allowance account representative pursuant to 40 CFR part 96, subpart B. Provisions on permits and emissions reporting closely match the corresponding provisions of 40 CFR part 96.

Subpart U applies the same level of stringency of control as is assumed for these sources in USEPA's emissions budget. The number of allowances issued to individual sources differs from the corresponding numbers in USEPA's emissions budget, principally due to redistribution of allowances of a source that has shut down, but the total number of allowances for source covered by subpart U is identical to the number of tons of NO[X] emissions for these sources in USEPA's budget calculations.

2. What Sources Are Subject to These Rules?

Subpart U focuses on boilers and turbines with heat input capacity greater than 250 million British Thermal Units (mmBTU) that do not produce significant electricity. This rule affects a variety of companies, including refineries, food processors, and steelmakers. The rule includes an appendix that identifies sources that are subject to the regulation and specifies [*34387] the number of allowances issued to each of these sources.

Illinois requested two minor revisions to the emissions inventory of sources to be subject to the industrial boiler rules. The first revision applies to LTV Steel. Illinois explains that a boiler of this company was mistakenly identified as a small source. Illinois identifies this boiler as needing an allocation from USEPA; Illinois recommends an allocation of 60 tons per ozone season. The second revision applies to a boiler at the University of Illinois at Urbana-Champaign. Illinois submitted evidence that this boiler has a design capacity below the 250 mmBTU/hour cutoff given in Illinois' rule and assumed in USEPA's budget calculations. This revision would remove an allocation of 86 tons of allowances. The net effect of recognizing LTV's larger size and voiding the University of Illinois control requirement would be to increase the emissions budget for industrial boilers and turbines by 188 tons per ozone season. Considering existing controls at the LTV boiler, the addition of the LTV boiler and removal of the University of Illinois boiler from the list of sources subject to control would decrease the actual emission reductions expected from the rule by 124 tons per ozone season, to about 4100 tons per ozone season.

3. What Are the Special Provisions of These Rules?

Various special provisions supplement these general features. Appendix E allocates three percent of the industrial boiler allowances as a new source set-aside. Illinois issues these allowances to new sources to ac-

commodate generally three years of well controlled operation, and redistributes any remaining "new source set-aside" allowances back to the existing sources listed in appendix E. Illinois rules allow special issuance of allowances to sources that achieve early reductions, i.e. reductions in 2001, 2002, or 2003, provided the source has reduced its emission rate by at least 30 percent. Illinois allows sources that burn natural gas or fuel oil to achieve "low emitter status," in which the source must limit its fuel usage to remain below 25 tons of NO[X] emissions per ozone season in exchange for being exempted from monitoring and allowance holding requirements. Illinois' rule differs slightly from USEPA's model rule (cf. *63 FR 57491*, October 27, 1998) by giving sources the option to use continuous emissions monitoring rather than conservative default emission factors to show compliance with the 25 tons per ozone season qualifying level. Finally, Illinois allows smaller sources that are not required to participate in the program to opt into the program.

4. How Much Emission Reduction Do These Rules Achieve?

With the inventory adjustments recommended by Illinois, the sources identified in subpart U have a total allocation of 4856 tons per ozone season. Each individual allocation generally reflects 60 percent control, i.e. 40 percent of uncontrolled emissions. Thus, subpart U requires emission reductions to about 7300 tons below uncontrolled levels. Because many sources already have some emission controls, the reduction of actual emissions from these sources is projected to be about 4100 tons.

D. Budget Demonstration

On June 18, 2001, Illinois submitted its demonstration that its rules were adequate to achieve the 2007 level of NO[X] emissions that USEPA budgeted for Illinois. As requested by USEPA, Illinois used USEPA's baseline inventory as the basis for this demonstration. Illinois provided the following table of NO[X] emissions from the various types of sources that emit NO[X] in significant quantities.

Sector	2007 Base ozone season total (tons)	2007 Budget ozone season total (tons)	Emission reduction (tons)	Category reduction (%)	Contribu- tion to NO[X] trading budget (tons)
Electrical Generating Units (EGUs)	119,311	32,372	86,939	73	30,701
Non-Electrical Generation Units (Non-EGUs)	71,011	59,765	11,246	16	4,856
Area	9,369	9,369	0	0	0
On-Road Mobile	112,518	112,518	0	0	0
Non-Road Mobile	56,724	56,724	0	0	0
Total	368,933	270,748	98,185	fn1 27	35,557

fn1 Total Reduction.

This table relies on USEPA budget information as of March 2, 2000. On this date, at *65 FR 11222*, USEPA published revised budgets for each of the states subject to the NO[X] SIP Call and provided a detailed inventory of baseline and controlled emissions, available on the internet at [ftp.epa.gov/EmisInventory/NO\[X\]SIPCall](http://ftp.epa.gov/EmisInventory/NO[X]SIPCall) - Mar2- 2000/.

Subsequent to March 2, 2000, the Court of Appeals for the District of Columbia Circuit remanded to USEPA the portion of the NO[X] SIP Call requiring control of stationary internal combustion engines. Thus, pending further rulemaking, USEPA does not currently require control of these sources. In Illinois, control of these sources is projected to reduce NO[X] emissions by 5954 tons per ozone season. Illinois has not adopted

regulations for control of these sources and intends instead to adopt these regulations after USEPA completes rulemaking pursuant to the remand. Nevertheless, Illinois includes the prospective control of these sources, to simplify the comparison of projected Illinois emissions with USEPA's budget requirements. This approach is of course equivalent to making a comparison in which both the Illinois inventory and USEPA's budget exclude these controls.

Also subsequent to March 2, 2000, Illinois identified the issues described earlier in this notice concerning the size of the boilers of LTV Steel and the University of Illinois. Illinois' budget demonstration reflects the state's recommended budget revisions for these sources. These revisions increase the baseline emissions by 64 tons per ozone season and increase the budget level emissions by 188 tons per ozone season.

Because Illinois has adopted rules which reflect the same control strategy as USEPA assumed in formulating its budget, Illinois' projected, controlled emission inventory closely resembles USEPA's budget for Illinois. Illinois obtains emission reductions from electricity generating units and from non-electricity generating point sources. The inventory for non-electricity generating units reflects controls on [*34388] both cement kilns and industrial boilers and turbines. Because Illinois is pursuing the same mix of controls as was assumed in USEPA's budget, the projected 2007 emissions for these two categories are identical to the emissions for these categories in USEPA's budget except for the adjustments to the inventory for the two industrial boilers as described above. Illinois obtains no emission reductions from area sources, highway mobile sources, or nonroad mobile sources beyond the baseline inventory. (The baseline inventory reflects reductions from federal measures, notably highway vehicle controls.) USEPA's budget also assumes no emission reductions below the baseline inventory, so for all three categories Illinois' inventory and USEPA's budget equal the same USEPA baseline inventory total. Consequently, with adjustment for the alterations described above, Illinois' budget demonstration shows that total 2007 NO[X] emissions are identical to the 2007 total NO[X] emissions budget that USEPA has required Illinois to achieve.

III. USEPA Review

A. Cement Kiln Rules (Subpart T)

1. What Guidance Did USEPA Use To Evaluate the State's Rule?

The proposed Federal implementation plan, proposed at 63 FR 56393 (October 21, 1998), including regulations covering cement kilns, reflects USEPA's recommendations for the design of State regulations of such sources. Also relevant are USEPA's regulations on emissions monitoring in 40 CFR part 60, a significant portion of which are incorporated by reference into the State rules. The portions incorporated by reference are listed elsewhere in this proposal.

2. Can USEPA Approve Illinois' Cement Kiln Rules?

A key deficiency in subpart T is language which affords sources in Illinois a delay of one year or more in complying with the requirements of the rule. However, on May 31, 2001, the Illinois legislature passed a bill to establish a fixed compliance deadline of May 31, 2004. We anticipate that the Governor will sign this legislation soon, which would remove this deficiency. This legislation must be signed before we can approve subpart T.

The earlier section describing the rule discusses two issues relating to "director's discretion", i.e., questions as to whether the rules authorize only the state to make significant judgments without USEPA having independent review authority. As previously discussed, USEPA concludes that the alternative standard provisions at section 217.402(a)(5) sufficiently protect the viability of the NO[X] budget plan. The intent is to ensure the source controls emissions to at least 30 percent below the baseline. The rule does not give the state sole discretion to broadly interpret terms such as "unreasonable cost" and "physical impossibility". The rule allows an "adjusted standard or alternate emission standard * * * consistent with federal law. Such alternate

shall be effective only when included as a federally enforceable condition in a permit approved by USEPA or approved as a SIP revision." USEPA believes this provision gives USEPA adequate authority to reject unacceptable requests for emission standards that require less than 30 percent emission reduction.

USEPA has conducted an extensive evaluation of controls feasible at cement kilns. Based on these efforts, USEPA does not expect any source to find 30 percent control to impose unreasonable costs or to be physically impossible. USEPA further expects to find that any request for lesser controls to be contrary to federal law, in particular the provisions of Clean Air Act section 110(a)(2)(D) requiring the state to prohibit emissions that contribute significantly to downwind nonattainment. Cement kilns which find control to be expensive or difficult can, in any case, opt into the trading program and purchase allowances as an alternative compliance strategy. Therefore, USEPA plans to use its discretion to reject requests for alternative emission standards.

The State rule addressed in this proposal applies to equipment of a size comparable to that used by USEPA in the development of the budget for the State of Illinois. For purposes of calculating the State's budget, USEPA assumed a 30 percent reduction in emissions from uncontrolled levels. The State's rule calls for a minimum reduction of NO[X] of 30 percent as part of the approved federally enforceable permit conditions for a kiln participating in the NO[X] trading program.

Illinois EPA identifies four large kilns as potentially impacted by the State's rule at three sources in the State. Each of these sources emitted more than 1 ton per day of NO[X] during 1995. The total base year 2007 seasonal emissions of NO[X] from these four kilns is calculated to be 4,073 tons during the control period. The required 30 percent control on these kilns will reduce the 2007 base to a controlled level of 2,851 tons during the control period.

We believe the State rule is approvable as an element of the State's NO[X] plan.

B. Industrial Boiler Rules (Subpart U)

Illinois' rules for industrial boilers and turbines are similar to USEPA's model rule, both in their general design and in their inclusion of several special features. These features include provisions for a new source set-aside, for early reduction credits, for some sources to obtain low emitter status, and for sources not required to participate in the program to opt into the program.

This review of Illinois' industrial boiler rules focuses on the slight differences between Illinois' rules and USEPA's model rule. The review begins with a review of the general features of the program and continues with a review of each of the above special features.

1. Can USEPA Approve the General Approach?

Illinois' rules for industrial boilers and turbines are similar to USEPA's model rule for these sources. Therefore, USEPA finds acceptable the general design of Illinois' program for these sources, including the allocation of allowances, the requirement to hold allowances equivalent to emissions during a properly defined ozone season, and the supplemental features including the provisions for a new source set-aside, for early reduction credits, for sources obtaining low emitter status, and for sources to opt into the program. Thus, the principal question for this review is whether the details of Illinois' rules properly implement these general features. This review focuses on modest differences between particular elements of Illinois' rules and the corresponding elements of USEPA's model rule.

Illinois used the emissions inventory developed by USEPA, given at [ftp.epa.gov/EmisInventory/NO\[X\]SIPCall](http://ftp.epa.gov/EmisInventory/NO[X]SIPCall) - Mar2- 2000, reflecting 60 percent emissions control, as the basis for determining allowances for each source. While the total number of allowances is identical to the number of tons per ozone season assumed for these sources in USEPA's budget, Illinois redistributes the allowances associated with a source that has shut down to the currently operating sources. USEPA guidance clearly accepts such redistributions

of control burden. A subsequent section of this notice reviews whether the emission reductions mandated by these rules in conjunction with reductions mandated by other Illinois rules are adequate to achieve the NO[X] emissions budget required by USEPA. [*34389]

USEPA's model rule has provision for periodic reassessment of the number of allowances to be issued to each source. In USEPA's model rule, the state makes an annual determination of heat input, which the state uses to determine the source's allocation of allowances for four years thereafter.

In contrast, Illinois does not change its distribution of allowances to industrial boiler sources from year to year. In fact, aside from adjustments from overall budget changes that may in time be imposed by USEPA, and aside from source-specific changes such as opt-ins and low emitter status changes, Illinois' allocations of allowances to industrial boilers and turbines are permanent. Illinois has the flexibility to distribute allowances in a fixed manner, and this approach clearly gives sources the advance notice of allotments that USEPA requires.

USEPA objects to language in the rule making the compliance deadline contingent on action in other nearby states. However, legislation passed by the state legislature would remedy this problem, establishing a fixed, noncontingent compliance deadline of May 31, 2004. If the governor signs this legislation, the state will have an approvable compliance deadline.

The remaining general features of Illinois' program for industrial boilers and turbines either apply the provisions that USEPA has promulgated (such as for monitoring emissions, imposing penalties for noncompliance, and tracking and transferring allowances) or establish provisions closely matching USEPA's recommendations (such as for applicability and requirements for permitting and emissions reporting). These elements of Illinois' program are clearly acceptable.

2. Can USEPA Approve the New Source Set-aside Features?

USEPA's model rule reserves allowances to be granted to new sources. The model rule reserves five percent of the budget for this purpose for the first three years of the program and two percent thereafter. The model rule grants allowances to new industrial boilers and turbines in an amount equal to the maximum design heat input times 0.17 pounds of allowances per mmBTU. Illinois' industrial boiler rule also reserves allowances for new sources, but Illinois reserves three percent of the large industrial boiler source budget in all years and issues a smaller number of allowances to new sources. Illinois' rules determine the number of allowances available to a new source based on a heat input rate that reflects actual usage once actual usage data become available times an emission factor equal to the lesser of 0.15 pounds NO[X] per mmBTU or the new source's permit limit. Illinois also requires the new source to purchase these allowances, the funds of which are returned to existing sources. USEPA expressly states that states have flexibility on these issues, and these aspects of Illinois' rules are well within the range of acceptable options.

3. Can USEPA Approve the Early Reduction Credit Features?

USEPA's model rule provides for early reduction credits. The model rule defines a process for requesting early reduction credits. In the model rule, sources that reduce their emission rate (pounds per mmBTU) by at least 20 percent and to below 0.25 pounds of NO[X] emissions per mmBTU in 2001 or 2002 may request early reduction credits. USEPA's model rule issues allowances to the extent the source reduces emissions below 0.25 pounds per mmBTU, up to a specified maximum total issuance. Illinois' rule applies the same basic process as the model rule. However, Illinois issues allowances to any timely reduction that reduces the emission rate by at least 30 percent, irrespective of whether the resulting emission rate is above or below 0.25 pounds per mmBTU. (Although section 217.470(c) is somewhat confusing, USEPA interprets the language according to Illinois' intent, that credits may be requested only if the emission rate is at least 30 percent below the prior actual emission rate.) Since Illinois requires suitable monitoring before and after the re-

duction to assure that credits reflect valid reductions, USEPA accepts issuing credits for reductions above the 0.25 pounds per mmBTU level.

Two issues relating to early reduction credits arise from the one year delay in program startup mandated by the District of Columbia Circuit Court in its ruling on USEPA's NO[X] SIP Call regulations. Since emission controls are no longer required in 2003, the first issue is whether sources that reduce emission rates in 2003 may receive early reduction credits. Illinois' rules provide that sources may request early reduction credits for adequate reductions "in the 2001 or 2002 control period, or if approved by USEPA the 2003 control period." The second issue is when these credits may be used. USEPA's model rule provides that early reduction credits may only be used in 2003 and 2004. Illinois' rules provide that early reduction credits are "for use in [the] 2004 control period, or later control periods authorized by USEPA."

Because reductions are not required in 2003, USEPA considers reductions in 2003 to be early reductions. That is, USEPA approves issuing early reduction credits for qualifying reductions in 2003. USEPA intended for these early reduction credits to be used in the first two control years of the program. Therefore, USEPA authorizes use of these credits in 2005 as well as 2004. All early reduction credits not used by 2005 must be retired at the end of 2005 and may no longer be used.

4. Can USEPA Approve the Low Emitter Exemption Features?

Section 217.472 of Illinois' rules provides an exemption very similar to an exemption in USEPA's model rule for sources that only burn natural gas and/or fuel oil and emit under 25 tons per ozone season. Such sources do not receive allowances and need not hold allowances for these emissions but must comply with permit limitations sufficiently restricting fuel usage to comply with this emission level.

The only significant difference in Illinois' rule from USEPA's model rule is that sources may rely on continuous emissions monitoring (rather than fuel usage multiplied by default emission factors) to assess compliance with the 25 ton limit. USEPA discussed the interpretation of section 217.472 with the state. Illinois clarified this section in its letter of June 18, 2001. First, Illinois stated that section 217.472(a)(4) in effect defines "potential NO[X] mass emissions" as the emissions determined either by emissions monitoring or by multiplying hours of operation times maximum potential hourly emissions. Second, Illinois clarified that, for sources relying on mass emissions monitoring, the restriction on operating hours should be interpreted as allowing only the number of hours of operation associated with the permissible number of tons of emissions (usually 25 tons per ozone season). Operation for any additional hours, during which the source would be emitting tons in excess of its permissible level (e.g. above 25 tons), would constitute a violation of the operating hours restriction and would cause the source to lose the low-emitter exemption (cf. section 217.472(e)). Third, as indicated in section 217.472(d) and reaffirmed by Illinois, whenever a source obtains low emitter status, Illinois will reduce the budget accordingly, so that sufficient allowances are set aside to account for the potential emissions of the low emitting source.

Similar provisions are in subpart W of part 217, applying to EGU's. The same interpretations of "potential NO[X] mass [*34390] emissions" and operating hours restrictions apply to subpart W, for similar reasons. Illinois also reaffirmed that its rules provide a similar budget adjustment for low emitting sources under subpart W as under subpart U. USEPA concurs with these interpretations and finds these features of Illinois' rules approvable.

USEPA finds one paragraph of Illinois' rule pertaining to the low emitting source exemption to be confusing. Illinois has clarified that section 217.472(a)(5) was intended to use the language of USEPA's model at 40 CFR 96.4(b)(1)(v) but inadvertently omitted several words. USEPA therefore interprets section 217.472(a)(5) to require that the permit for the exempted source must "require that *the owner or operator of the unit shall retain* for 5 years at the source that includes the unit, [records demonstrating compliance]." (Underlined words added.)

5. Can USEPA Approve the Opt-in Features?

Finally, the Illinois rules include provisions similar to provisions in the USEPA model rule for sources not required to participate in the program to opt into the program. As with the model rule, Illinois requires these sources to monitor emissions using continuous emissions monitors meeting the same criteria as mandatory program participants. Illinois' criteria and process for opting in, the requirements and process for withdrawing after opting in, and the method of calculating the number of allowances to be allocated to opt-in sources, are all essentially identical to the corresponding provisions in USEPA's model rule. USEPA finds this aspect of Illinois' program acceptable.

6. In Summary, Can USEPA Approve Illinois' Industrial Boiler Rules?

Illinois' rules for industrial boiler NO[X] emissions closely resemble USEPA's model rule. USEPA believes that the modest differences between Illinois' rules and the model rule are well within the range of flexibility that USEPA has offered to states. The recent legislation overriding the rules' contingent compliance date and establishing a compliance requirement starting May 31, 2004, will provide a timely deadline for compliance. Once this legislation is signed by the Governor, USEPA believes that Illinois' rules for industrial boilers and turbines will satisfy USEPA's requirements for program design and provide a creditable contribution toward achieving the NO[X] emissions budget that USEPA requires Illinois to achieve and a creditable NO[X] emission reduction for attainment planning purposes.

C. Budget Demonstration

1. Does USEPA Accept Illinois' Recommended Budget Revisions?

Illinois submitted evidence that the LTV Steel boiler is in fact a large boiler that should have been inventoried as having much greater emissions and should have been assumed to be subject to control. Illinois also submitted evidence that the maximum design heat input for the University of Illinois boiler is below 250 mmBTU/hour, so that this source should have been assumed to remain uncontrolled. These revisions would have minimal impact on the overall impact of the program. Also, these revisions are similar to revisions recommended by other states during early 2000 and incorporated into USEPA's budget in its March 2, 2000, rulemaking. While USEPA would have preferred to address these revisions then, USEPA can nevertheless address Illinois' recommendations now. USEPA concludes that Illinois has adequately justified these modest revisions to the inventory of data on these sources.

The special interaction between states and USEPA in implementing the NO[X] emission trading program requires special procedures for addressing the revisions requested by Illinois. USEPA has established a budget of total 2007 NO[X] emissions to be achieved by Illinois. Illinois cannot unilaterally change this budget; Illinois must instead request that USEPA change this budget.

Illinois has made its recommended allotment revisions contingent on USEPA concurrence with the requested budget revisions. Subpart U provides allotments without these revisions. Section 217.460(e) within subpart U specifies that Illinois will adjust the allocations for single units if USEPA makes unit-specific adjustments to the budget. USEPA hereby proposes to adjust the budget to reflect the revisions requested by Illinois. If finalized, this will have the result pursuant to section 217.460(e) that LTV Steel will receive an allocation of 60 allowances and the University of Illinois will receive no allowances and may be exempt from the requirements of subpart U.

2. Do Illinois' Rules Satisfy USEPA's Budget?

Illinois has adopted regulations governing NO[X] emissions from EGUs, from cement kilns, and from large industrial boilers and turbines. On August 31, 2000, at 65 FR 52967, USEPA proposed to approve Illinois' EGU rules provided Illinois removed language making the compliance date contingent on similar rules

taking effect in nearby states. The Illinois legislature has passed a bill to override that contingency and establish a fixed compliance deadline of May 31, 2004. Today's rulemaking proposes to approve the regulations for cement kilns and for large industrial boilers and turbines, provided the legislation is signed. Thus, USEPA believes that these regulations will be fully creditable for satisfying USEPA's NO[X] emission budget requirements and attainment planning requirements once the Governor signs the legislation setting a fixed compliance date.

Illinois adopted rules reflecting the same control strategy as USEPA assumed in formulating its budget. Therefore, Illinois' budget demonstration is straightforward. Illinois used USEPA's baseline inventory as a basis for this demonstration, using the same five categories of sources as USEPA. For four of the five categories, namely electricity generating units, stationary area sources, highway vehicle sources, and nonroad vehicles, the inventory in Illinois' budget demonstration is identical to USEPA's budget inventory for both the base case and the controlled emissions case.

Illinois' subinventory for non-EGU point sources differs slightly from USEPA's subinventory for these sources. The differences are attributable to adjustments that Illinois recommends for LTV Steel and for the University of Illinois at Urbana-Champaign. As discussed above, USEPA proposes to make these revisions to the baseline and budget inventories.

USEPA concludes that Illinois has demonstrated that its NO[X] regulations are adequate to achieve the adjusted 2007 NO[X] emissions budget required by USEPA. Therefore, USEPA proposes to conclude further that Illinois has satisfied the requirements of USEPA's NO[X] SIP Call.

IV. Proposed Action

USEPA proposes to approve Illinois' cement kiln rule and its industrial boiler rule (subparts T and U of part 217, respectively) as elements of the State's plan to meet the requirements of the NO[X] SIP Call and the requirements of the I-hour ozone demonstration for the Chicago area, provided the governor signs legislation setting a fixed compliance deadline. USEPA proposes to adjust the budget to reflect the revisions requested by Illinois, adding 188 tons to the nonEGU point source portion of the budget due to [*34391] reassessments of the size of boilers at LTV and the University of Illinois. USEPA proposes to approve Illinois' budget demonstration, demonstrating that Illinois' cement kiln and industrial boiler rules, in conjunction with the state's rules for electricity generating units, are adequate to achieve the NO[X] emissions level that USEPA has budgeted for the state. Therefore, USEPA proposes to conclude more generally that Illinois has satisfied the requirements of USEPA's NO[X] SIP Call, again provided the governor signs legislation setting a fixed compliance deadline.

USEPA is not proposing action today on subpart X, entitled "Voluntary NO[X] Emissions Reduction Program." USEPA is continuing to review this portion of Illinois' submittal and plans to propose rulemaking on these rules in the near future.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Gov-

ernment and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), USEPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, USEPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. USEPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 20, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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BILLING CODE 6560-50-P



HODGE • DWYER • ZEMAN

ATTORNEYS AT LAW

KATHERINE D. HODGE
E-Mail: khodge@hdzlaw.com

September 20, 2005

Thomas V. Skinner
Regional Administrator
United States Environmental
Protection Agency
Region V
77 West Jackson Boulevard (19-J)
Chicago, Illinois 60605

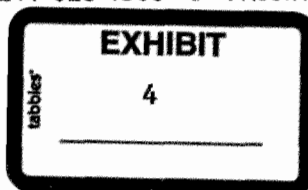
RE: Request for Applicability Determination
CFB Boiler Located at Bunge Milling, Inc.
Danville, Illinois Facility
Facility I.D. No.: 183020ABT
Our File No. -- BUNG:005

Dear Administrator Skinner:

Bunge North America ("Bunge") hereby requests an applicability determination from the United States Environmental Protection Agency ("USEPA") with regard to the federal and Illinois state regulations concerning the NOx Budget Trading Program (this "Request"). In this Request, we will present the following: (1) an identification and a brief description of the facility; (2) a physical description of the unit; and, (3) a presentation and discussion of the federal and Illinois state regulations that may be applicable.

I. THE FACILITY

The facility at issue is owned and operated by Bunge Milling, Inc., and is located at 321 East North Street, Danville, Illinois 61832, I.D. No.: 183020ABT ("the Facility"). The Facility consists of a corn dry mill and a soybean processing plant, which produce soybean oil corn oil, corn meal, soybean meal and other products.



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II. THE UNIT

The unit at issue is a circulating fluidized bed, coal-fired, boiler (the "CFB Boiler"). The CFB Boiler is permitted to operate at a rate of 322.5 million BTUs per hour. The CFB Boiler controls pollutant emissions by utilizing limestone sorbent and a pulse-jet baghouse. The CFB Boiler has continuous emission monitoring systems to measure for SO₂, NO_x, CO and opacity. The CFB Boiler serves a 20-megawatt ("20 MWe") generator, which provides all electrical power and steam to the grain handling, milling and extraction production lines at the Facility. Occasionally, power from the CFB Boiler is sold to the grid.

III. APPLICABLE REGULATIONS

It would appear that under the federal NO_x Budget Trading Program for State Implementation Plans rule (40 C.F.R. § 96.1, et. seq.) ("Part 96"), the CFB Boiler should be included in the NO_x budget trading program. The applicability section of Part 96 provides, in pertinent part, as follows:

- (a) The following units in a State shall be NO[X] Budget units, and any source that includes one or more such units shall be a NO[X] Budget source, subject to the requirements of this part:

(1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or

(2) Any unit that is not a unit under paragraph (a) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.

40 C.F.R. § 96.4. (Emphasis added.)

Assuming that the reference in (a)(2) to "paragraph a" could be interpreted to mean paragraph (a)(1), the CFB Boiler would be a NO_x budget unit under 40 C.F.R. § 96.4. The applicability provisions of the federal regulations cover (1) all boilers that serve generators with a capacity greater than 25 MWe and (2) all other boilers with a maximum design heat input greater than 250 mmBtu/hr. The CFB Boiler has a permitted maximum design heat input of 322.5 mmBtu/hr and would therefore be included as a NO_x budget unit under 40 C.F.R. § 96.4.

However, Part 96 does not apply where a State has developed its own NO_x Trading Program rules and the USEPA has approved the State rules:

The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that

Thomas V. Skinner
September 20, 2005
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has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement.

40 C.F.R. § 96.1.

Illinois developed its own rules for a NO_x Trading Program (the "Illinois Rule"). The Illinois Rule was adopted by the Administrator and included in the Illinois SIP. *See* 66 FR 56449 (Nov. 8, 2001).

Pursuant to the Illinois State Implementation Plan ("SIP"), the applicability of boilers is defined in 35 Ill. Admin. Code § 217.454 (for specified NO_x generating units, i.e., for Non-EGUs) and Ill. Admin. Code § 217.754 (for electrical generating units, i.e., for EGUs). Both Sections 217.454 and 217.754 are incorporated by reference into the Illinois SIP. Section 217.454 provides as follows:

Applicability

- a) This Subpart applies to any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr and that is:
 - 1) A unit listed in Appendix E¹ of this Subpart, irrespective of any subsequent changes in ownership, unit designation, or name of the unit; or
 - 2) A unit not listed in Appendix E of this Subpart that:

¹ Appendix E contains a list of covered units and the respective allocation of NO_x allowances for each such unit. The CFB Boiler is not included in this list. We reviewed a copy of the Illinois EPA's initial inventory of covered sources and determined that the CFB Boiler was not included in the inventory. We are aware of one other such covered "existing" boiler that was omitted by the Illinois EPA. The owner of that source, LTV Corporation, advised the Illinois EPA of the omission during the State rulemaking, and the Illinois Pollution Control Board included the following Board Note in Appendix E:

* Pursuant to Section 217.460(f), Column 2, Column 4 and Column 5 will be adjusted at such time as USEPA makes an allocation for LTV Steel's Boiler No. 4B.

We are aware that LTV Corporation petitioned EPA for an allocation, and that such allocation was granted. The Illinois EPA is in the process of opening Part 217 to include this allocation, as well as other "fix-ups."

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September 20, 2005
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- A) At no time serves a generator producing electricity for sale;
- B) At any time serves a generator producing electricity for sale, if such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is smaller than this calculated number, the unit is subject to the provisions of this Subpart, but if the size of the generator is greater than this calculated number, the unit is subject to the provisions of Subpart W of this Part;
- C) Is part of any source, as that term is defined in 35 Ill. Adm. Code Section 211.6130, listed in Appendix E of this Part; or
- D) Is a unit subject to Subpart W of this Part (excluding any unit listed in Appendix F of this Part, regardless of any change in ownership or any change of operator), and the owner or operator makes a permanent election, at the time of applying for a budget permit pursuant to this Part, to subject the unit to the requirements of this Subpart rather than Subpart W of this Part. Any unit for which such an election is made will not receive an allocation from the Subpart U or Subpart W NO_x Trading Budget.

35 Ill. Admin. Code § 217.454. (Emphasis added.)

The CFB Boiler has a maximum design heat input greater than 250 mmbtu/hr, serves a generator producing electricity for sale, serves a generator with a nameplate capacity of less than 25 MWe and has the potential to use more than 50% of the potential electrical output capacity generator (size of the generator = 20 MWe; 50% of PEOC = $322.5 * 0.0488 = 15.738$ MWe). Therefore, pursuant to Section 217.454(a)(2)(B), the CFB Boiler "is subject to the provisions of Subpart W."

Thomas V. Skinner
September 20, 2005
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Section 217.754 of Subpart W provides as follows:

Applicability

- a) The following fossil fuel-fired stationary boilers, combustion turbines or combined cycle systems are electrical generating units (EGUs) and are subject to this Subpart:
- 1) Any unit serving a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale, excluding those units listed in Appendix D of this Part.
 - 2) Any unit with a maximum design heat input that is greater than 250 mmbtu/hr that commences operation on or after January 1, 1999, serving at any time a generator that has a nameplate capacity of 25 MWe or less and has the potential to use more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is greater than this calculated number, the unit is an EGU subject to the provisions of this Subpart.

35 Ill. Admin. Code § 217.754. (Emphasis added.)

The CFB Boiler is subject to Subpart W pursuant to Section 217.454(a)(2)(B). However, Subpart W applies to all boilers over 250 mmbtu/hr that (1) serve generators with a nameplate capacity greater than 25 MWe, and (2) all boilers that commenced operation on or after January 1, 1999, that serve generators with a nameplate capacity less than 25 MWe and have the potential to use more than 50% of the potential electrical output capacity of the unit. Here, the CFB Boiler serves a 20 MWe generator that has the potential to use more than 50% of its capacity (see above), but the CFB Boiler commenced operation before January 1, 1999. Under the Illinois regulations, neither the Non-EGU applicability section nor the EGU applicability section would apply to the CFB Boiler.

IV. SUMMARY

In summary, the Illinois NOx SIP regulations, as written, do not cover the CFB Boiler. It does appear that Part 96 would include the CFB Boiler. However, because the Illinois SIP has been approved by the Administrator, as a matter of law, it appears that neither the State of Illinois nor the federal government may enforce the requirements of Part 96 against Bunge, absent a change of the State rules.

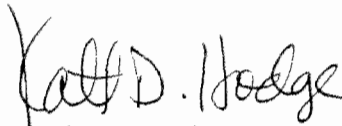
Thomas V. Skinner
September 20, 2005
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V. **REQUEST**

Based on the discussion above, Bunge requests that the USEPA evaluate this matter and make a formal determination as to the applicability of the Illinois Rule and Part 96. Bunge requests that the above-mentioned applicability determination be made as expeditiously as possible in order for Bunge to begin the process of including the CFB Boiler in the NOx Trading Program. Moreover, Bunge will be submitting a separate request to USEPA for allocation of NOx Allowances for the CFB Boiler, and requests USEPA's expeditious processing of that request, as well.

Should you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Katherine D. Hodge

KDH:GWN:plt

pc: Beverly Garner, Esq. (via U.S. Mail)
Steve Poplawski, Esq. (via U.S. Mail)
Mr. Loren L. Polak (via U.S. Mail)
Mary McAuliffe, Esq. (via U.S. Mail)
Laurel L. Kroack, Esq. (via U.S. Mail)

BUNG:005/Corr/Request for applicability determination



HODGE ▽ DWYER ▽ ZEMAN
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KATHERINE D. HODGE
E-Mail: khodge@hdzlaw.com

September 20, 2005

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

RE: Request for Applicability Determination
CFB Boiler Located at Bunge Milling, Inc.
Danville, Illinois Facility
Facility I.D. No.: 183020ABT
Our File No. – BUNG:005

Dear Director Scott:

Bunge North America (“Bunge”) hereby requests an applicability determination from the Illinois Environmental Protection Agency (“Illinois EPA”) with regard to the Illinois state regulations concerning the NOx Budget Trading Program and your opinion with regard to the applicability of the corresponding federal rule (this “Request”). In this Request, we will present the following: (1) an identification and a brief description of the facility; (2) a physical description of the unit; and, (3) a presentation and discussion of the federal and Illinois state regulations that may be applicable.

I. THE FACILITY

The facility at issue is owned and operated by Bunge Milling, Inc., and is located at 321 East North Street, Danville, Illinois 61832, I.D. No.: 183020ABT (“the Facility”). The Facility consists of a corn dry mill and a soybean processing plant, which produce soybean oil, corn oil, corn meal, soybean meal and other products.

Douglas P. Scott
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Page 2

II. THE UNIT

The unit at issue is a circulating fluidized bed, coal-fired, boiler (the "CFB Boiler"). The CFB Boiler is permitted to operate at a rate of 322.5 million BTUs per hour. The CFB Boiler controls pollutant emissions by utilizing limestone sorbent and a pulse-jet baghouse. The CFB Boiler has continuous emission monitoring systems to measure for SO₂, NO_x, CO and opacity. The CFB Boiler serves a 20-megawatt ("20 MWe") generator, which provides all electrical power and steam to the grain handling, milling and extraction production lines at the Facility. Occasionally, power from the CFB Boiler is sold to the grid.

III. APPLICABLE REGULATIONS

It would appear that under the federal NO_x Budget Trading Program for State Implementation Plans rule (40 C.F.R. § 96.1, et. seq.) ("Part 96"), the CFB Boiler should be included in the NO_x budget trading program. The applicability section of Part 96 provides, in pertinent part, as follows:

- (a) The following units in a State shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this part:
 - (1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or
 - (2) Any unit that is not a unit under paragraph (a) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.

40 C.F.R. § 96.4. (Emphasis added.)

Assuming that the reference in (a)(2) to "paragraph a" could be interpreted to mean paragraph (a)(1), the CFB Boiler would be a NO_x budget unit under 40 C.F.R. § 96.4. The applicability provisions of the federal regulations cover (1) all boilers that serve generators with a capacity greater than 25 MWe and (2) all other boilers with a maximum design heat input greater than 250 mmBtu/hr. The CFB Boiler has a permitted maximum design heat input of 322.5 mmBtu/hr and would therefore be included as a NO_x budget unit under 40 C.F.R. § 96.4.

However, Part 96 does not apply where a State has developed its own NO_x Trading Program rules and the USEPA has approved the State rules:

The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that

Douglas P. Scott
September 20, 2005
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has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement.

40 C.F.R § 96.1.

Illinois developed its own rules for a NOx Trading Program (the "Illinois Rule"). The Illinois Rule was adopted by the Administrator and included in the Illinois SIP. *See* 66 FR 56449 (Nov. 8, 2001).

Pursuant to the Illinois State Implementation Plan ("SIP"), the applicability of boilers is defined in 35 Ill. Admin. Code § 217.454 (for specified NOx generating units, i.e., for Non-EGUs) and Ill. Admin. Code § 217.754 (for electrical generating units, i.e., for EGUs). Both Sections 217.454 and 217.754 are incorporated by reference into the Illinois SIP. Section 217.454 provides as follows:

Applicability

- a) This Subpart applies to any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr and that is:
 - 1) A unit listed in Appendix E¹ of this Subpart, irrespective of any subsequent changes in ownership, unit designation, or name of the unit; or
 - 2) A unit not listed in Appendix E of this Subpart that:

¹ Appendix E contains a list of covered units and the respective allocation of NOx allowances for each such unit. The CFB Boiler is not included in this list. We reviewed a copy of the Illinois EPA's initial inventory of covered sources and determined that the CFB Boiler was not included in the inventory. We are aware of one other such covered "existing" boiler that was omitted by the Illinois EPA. The owner of that source, LTV Corporation, advised the Illinois EPA of the omission during the State rulemaking, and the Illinois Pollution Control Board included the following Board Note in Appendix E:

* Pursuant to Section 217.460(f), Column 2, Column 4 and Column 5 will be adjusted at such time as USEPA makes an allocation for LTV Steel's Boiler No. 4B.

We are aware that LTV Corporation petitioned EPA for an allocation, and that such allocation was granted. The Illinois EPA is in the process of opening Part 217 to include this allocation, as well as other "fix-ups."

Douglas P. Scott
September 20, 2005
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- A) At no time serves a generator producing electricity for sale;
- B) At any time serves a generator producing electricity for sale, if such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is smaller than this calculated number, the unit is subject to the provisions of this Subpart, but if the size of the generator is greater than this calculated number, the unit is subject to the provisions of Subpart W of this Part;
- C) Is part of any source, as that term is defined in 35 Ill. Adm. Code Section 211.6130, listed in Appendix E of this Part; or
- D) Is a unit subject to Subpart W of this Part (excluding any unit listed in Appendix F of this Part, regardless of any change in ownership or any change of operator), and the owner or operator makes a permanent election, at the time of applying for a budget permit pursuant to this Part, to subject the unit to the requirements of this Subpart rather than Subpart W of this Part. Any unit for which such an election is made will not receive an allocation from the Subpart U or Subpart W NO_x Trading Budget.

35 Ill. Admin. Code § 217.454. (Emphasis added.)

The CFB Boiler has a maximum design heat input greater than 250 mmbtu/hr, serves a generator producing electricity for sale, serves a generator with a nameplate capacity of less than 25 MWe and has the potential to use more than 50% of the potential electrical output capacity generator (size of the generator = 20 MWe; 50% of PEOC = $322.5 * 0.0488 = 15.738$ MWe). Therefore, pursuant to Section 217.454(a)(2)(B), the CFB Boiler "is subject to the provisions of Subpart W."

Douglas P. Scott
September 20, 2005
Page 5

Section 217.754 of Subpart W provides as follows:

Applicability

- a) The following fossil fuel-fired stationary boilers, combustion turbines or combined cycle systems are electrical generating units (EGUs) and are subject to this Subpart:
- 1) Any unit serving a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale, excluding those units listed in Appendix D of this Part.
 - 2) Any unit with a maximum design heat input that is greater than 250 mmbtu/hr that commences operation on or after January 1, 1999, serving at any time a generator that has a nameplate capacity of 25 MWe or less and has the potential to use more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is greater than this calculated number, the unit is an EGU subject to the provisions of this Subpart.

35 Ill. Admin. Code § 217.754. (Emphasis added.)

The CFB Boiler is subject to Subpart W pursuant to Section 217.454(a)(2)(B). However, Subpart W applies to all boilers over 250 mmbtu/hr that (1) serve generators with a nameplate capacity greater than 25 MWe, and (2) all boilers that commenced operation on or after January 1, 1999, that serve generators with a nameplate capacity less than 25 MWe and have the potential to use more than 50% of the potential electrical output capacity of the unit. Here, the CFB Boiler serves a 20 MWe generator that has the potential to use more than 50% of its capacity (see above), but the CFB Boiler commenced operation before January 1, 1999. Under the Illinois regulations, neither the Non-EGU applicability section nor the EGU applicability section would apply to the CFB Boiler.

IV. SUMMARY

In summary, the Illinois NOx SIP regulations, as written, do not cover the CFB Boiler. It does appear that Part 96 would include the CFB Boiler. However, because the Illinois SIP has been approved by the Administrator, as a matter of law, it appears that neither the State of Illinois nor the federal government may enforce the requirements of Part 96 against Bunge, absent a change of the State rules.

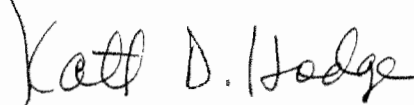
Douglas P. Scott
September 20, 2005
Page 6

V. **REQUEST**

Based on the discussion above, Bunge requests that the Illinois EPA evaluate this matter and make a formal determination as to the applicability of the Illinois Rule and provide Bunge with its opinion regarding the applicability of Part 96. Bunge requests that the above-mentioned applicability determination and opinion be made as expeditiously as possible in order for Bunge to begin the process of including the CFB Boiler in the NOx Trading Program.

Should you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Katherine D. Hodge

KDH:GWN:plt

pc: Beverly Garner, Esq. (via U.S. Mail)
Steve Poplawski, Esq. (via U.S. Mail)
Mr. Loren L. Polak (via U.S. Mail)
Mary McAuliffe, Esq. (via U.S. Mail)
Laurel L. Kroack, Esq. (via U.S. Mail)

BUNG:005/Corr/Scott Ltr - Request for applicability determination



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

(217) 782-3397
(217) 782-9143 TDD

December 13, 2005

Ms. Katherine D. Hodge
Hodge Dwyer Zeaman
3150 Roland Avenue
Springfield, Illinois 62705-5776

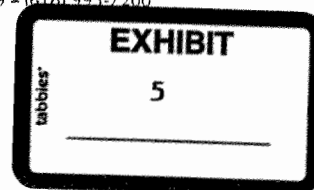
Dear Ms. Hodge:

Director Scott has asked that I respond to your letter of September 20, 2005. Bureau of Air staff has reviewed your letter requesting an applicability determination as to whether the circulating fluidized bed, coal-fired boiler ("CFB Boiler") in Danville (ID Number 183020ABT) owned and operated by Bunge Milling, Inc. ("Bunge"), is subject to the Illinois NOx trading regulations under the NOx Budget Trading Program. From the information provided in the letter and a review of the air regulations at 35 IAC Part 217, Bunge is not currently covered by the NOx Budget Trading Program.

According to Bunge, the CFB Boiler commenced operation in 1986, has a maximum design heat input of 322.5 mmBtu/hr, and serves one generator having a nameplate capacity of 20 MWe, which has produced some electricity for sale. Illinois' NOx Budget Trading Program regulations are set forth in Subparts A (general provisions), U (for non-EGUs), and W (for EGUs) of Part 217.

Under Section 217.454, Subpart U applies to a unit with maximum design heat input of greater than 250 mmBtu/hr if (1) the unit is listed in Appendix E of the Subpart or (2) the unit is not listed and serves a generator producing electricity for sale and having a nameplate capacity of 25 MWe or less and the potential to use no more than 50 percent of the potential electrical output capacity of the unit. There are some other categories of units subject to Subpart U listed as well, but they are not relevant to the evaluation of Bunge's status.

Section 217.454(a)(2)(B) provides that 50 percent of potential electrical output capacity is equal to the maximum design heat input multiplied by 0.0488 MWe/mmBtu. The CFB Boiler is not listed in Appendix E, and 50% of its potential electrical output capacity, based on information provided by Bunge, equals 15.738 MWe - thus the nameplate capacity of the associated



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generator is greater than 50 percent of the potential capacity. Consequently, the CFB Boiler is not subject to Subpart U.

Under Section 217.754, Subpart W applies to a unit with a maximum design heat input greater than 250 mmBtu/hr, commencing operation on or after January 1, 1999, and serving a generator having a nameplate capacity of 25 MWe or less and having the potential to use more than 50% of the potential electrical output capacity of the unit. There is another category of units subject to Subpart W listed as well, but that category is not relevant to the evaluation of Bunge's situation.

Because the CFB Boiler commenced operation prior to 1999, it is not subject to Subpart W. Thus, since the unit is not currently subject to either Subpart U or Subpart W, the CFB Boiler is not currently subject to the NOx Budget Trading Program.

However, this exclusion of Bunge from the program was inadvertent and the Illinois EPA believes that Bunge's boiler should be a listed non-EGU in Appendices D and E of Part 217. As such, the Illinois EPA plans to correct this exclusion in the upcoming amendments to Part 217. To accomplish this, the Illinois EPA will work with Bunge and will request that U.S. EPA add the appropriate number of NOx allowances for Bunge's CFB Boiler to the statewide NOx budget for non-EGUs. Once this is accomplished, the Illinois EPA will be able to allocate NOx allowances to Bunge. Until such time as the current Illinois NOx trading regulations are amended to include Bunge in Appendices D and E of Part 217 and U.S. EPA increases Illinois' NOx budget to include the CFB Boiler, Bunge will continue to be exempt from the NOx Budget Trading Program.

We appreciate you bringing this situation to our attention and will work with you to resolve this issue.

Sincerely,



Laurel L. Kroack
Chief, Bureau of Air

cc: Dwight C. Alpern, USEPA
John Mooney, USEPA

g. kk.Bloomberg.Hodge Bunge-11-04



Electronic Filing - Received, Clerk's Office, August 3, 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 22 2005

REPLY TO THE ATTENTION OF

R-19J

Katherine D. Hodge
Hodge, Dwyer, Zeman, Attorneys at Law
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776

Re: Request for Applicability Determination of the
Illinois NOx Trading Program Regulations for the CFB Boiler
at the Bunge Milling, Inc. Facility in Danville, Illinois

Dear Ms. Hodge:

This letter responds to the Bunge North America (Bunge)
September 20, 2005, letter addressed to the U.S.
Environmental Protection Agency (U.S. EPA) Region 5. The
letter requests a determination of applicability of the
Federal and Illinois regulations concerning the NOx Budget
Trading Program to the circulating fluidized bed (CFB)
coal-fired boiler ("CFB Boiler") unit at the Bunge Milling,
Inc. facility located in Danville, Illinois. Specifically,
Bunge's September 20, 2005, letter makes the following
request:

Determine whether the Illinois NOx State
Implementation Plan (SIP) regulations (35 Ill. Admin.
Code § 217.454 and 35 Ill. Admin. Code § 217.754), as
written, apply to the CFB Boiler.

Based on information provided in Bunge's September 20,
2005, letter, the federal NOx Budget Trading Program for
State Implementation Plans rule (40 C.F.R. Part 96) does
not apply where a State has developed its own NOx Trading
Program rules and the U.S. EPA has approved the State rules
(see 40 C.F.R. § 96.1). Illinois developed its own State
Implementation Plan (SIP) rules for a NOx Trading Program
in 35 Ill. Admin. Code (IAC) Part 217, Subparts A, U, and
W. These rules were adopted by the U.S. EPA Administrator
on November 8, 2001 (see 66 FR 56449).

EXHIBIT

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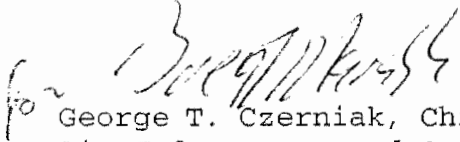
Determination:

After reviewing the September 20, 2005, letter, U.S. EPA believes it is the responsibility of the State of Illinois to make the determination of applicability for the CFB Boiler. U.S. EPA's decision is based on two facts: (1) 40 C.F.R. § 96.1, which says that 40 C.F.R. Part 96 does not apply when a state has developed its own rules and those rules have been approved by the Administrator; and (2) the Illinois NOx Trading Program rules that were approved by U.S. EPA on November 8, 2001 (see 66 FR 56449) specify that the State makes applicability determinations as part of its responsibility in the SIP.

On December 13, 2005, Illinois EPA mailed a determination letter to Bunge, and sent a copy of the determination letter to U.S. EPA, regarding Bunge's September 20, 2005 request. In the December 13, 2005 letter, Illinois EPA concluded that since the "nameplate capacity of the associated generator is greater than 50 percent of the potential capacity" and "because the CFB Boiler commenced commercial operation prior to 1999," the CFB Boiler "is not currently subject to either Subpart U or Subpart W, and thus the CFB Boiler is not subject to the NOx Budget Trading Program." U.S. EPA concurs with Illinois EPA's determination that the CFB boiler at the Bunge Milling, Inc. facility located in Danville, Illinois is not subject to the NOx SIP regulations as published in the Illinois SIP at 35 IAC Part 217, Subparts A, U, and W.

If you have any further questions regarding this issue please contact Brent Marable, Chief, Illinois/Indiana Section at 312-886-6812.

Very truly yours,



George T. Czerniak, Chief
Air Enforcement and Compliance Assurance Branch

cc: Laurel L Kroack, Illinois EPA
Dwight C. Alpern, U.S. EPA



HODGE · DWYER · ZEMAN

ATTORNEYS AT LAW

GALE W. NEWTON

E-mail: gnewton@hdzlaw.com

May 3, 2006

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Mr. Gary Beckstead
Environmental Planning Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794

RE: NOx Allowance Allocation
Bunge Milling, Inc.
Our File No. – BUNG:005

Dear Gary:

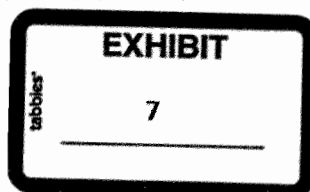
I am writing to you on behalf of our client, Bunge Milling, Inc. (“Bunge”). We would like to thank you for the opportunity to meet with you, Yoginder Mahajan, and David Bloomberg regarding the inclusion of Bunge’s CFB boiler located in Danville, Illinois, into the Illinois NOx Budget Trading Program. As you will recall, the Illinois Environmental Protection Agency (“IEPA”) requested that we send a formal request to you regarding the inclusion of the CFB boiler into the program. Please consider this letter Bunge’s formal request.

In this letter, we will provide: (1) a short background regarding this matter; (2) a discussion of the number of NOx allowances that Bunge is requesting, including the calculations used for the request and supporting documentation; and (3) Part 75 monitoring considerations.

Background

The CFB boiler has a capacity of 322.5 million BTUs per hour, as listed in its Clean Air Act Permit Program permit. The CFB boiler began operations in 1990. The federal NOx Budget Trading Program for state implementation plans (40 C.F.R. § 96.1, *et seq.*) would have included the CFB boiler into the trading program because the boiler has a maximum design heat input

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Mr. Gary Beckstead
May 3, 2006
Page 2

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greater than 250 million BTUs an hour. See 40 C.F.R. § 96.4(a). However, under the Illinois rule, the CFB boiler is not a non-EGU because it had the potential to use more than fifty percent of its potential electrical output capacity. See 35 Ill. Admin. Code § 217.454. Further, the CFB boiler is not an EGU because it commenced operation before January 1, 1999. See 35 Ill. Admin. Code § 217.754.

Bunge has obtained applicability determinations from the IEPA and the United States Environmental Protection Agency that confirm that the CFB boiler is not included into the Illinois NOx Budget Trading Program because of the discussion above. Applicability determinations are attached hereto as Exhibits A and B.

NOx Allowance Allocation

To determine the number of NOx allowances that should be allocated to the CFB boiler, one must first determine the amount of uncontrolled NOx that the CFB boiler would have emitted in the 1995 ozone season. To determine this number, one must determine the amount of coal actually burned during the 1995 season, multiply the actual coal use by the BTUs per pound in the coal, and multiply this number by the appropriate AP-42 factor which is, in this case, 0.69 pounds of NOx per million BTUs. After the amount of uncontrolled NOx from the 1995 season is determined, the number of NOx allowances that should be allocated to the CFB boiler is calculated by multiplying the number of uncontrolled tons of NOx during the season by the growth factor for the boiler, which in this case is 0.791, and multiplying by the control required by the program, which is sixty percent. During the 1995 season, the CFB boiler used 44,449 tons of fuel (note: the fuel used consisted of 42,129.3 tons of coal, 165.5 tons of coal fines and 2,154.3 tons of petroleum coke). The average BTU value of the fuel used was 10,559 BTUs per pound. Using these numbers and the calculations described above, the CFB boiler should be allocated approximately 102 NOx allowances per season. Bunge, therefore, requests an allocation of 102 NOx allowances per season.

During the meeting, the IEPA requested documentation of the fuel usage during the 1995 season and the average BTU-per-pound value of fuel. Attached as Exhibit C, please find documentation charting the 1995 seasonal usage of fuel by the CFB boiler and average BTU value of the fuel used during the 1995 season. Attached hereto as Exhibit D, please find a printout of a spreadsheet containing the calculations described above. We will provide you with an electronic copy of the spreadsheet if needed.

Part 75 Monitoring

The CFB Boiler currently utilizes a monitoring system that is compliant 40 C.F.R. Part 60. Bunge has investigated the possibility of upgrading the Part 60 compliant monitor to achieve compliance with 40 C.F.R. Part 75. Bunge has determined that the upgrade will require the installation of several items of hardware including: (1) a NOx analyzer; (2) a heated sample

Mr. Gary Beckstead
May 3, 2006
Page 3

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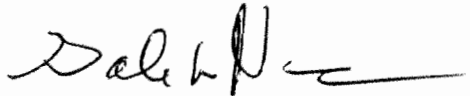
umbilical; (3) a dilution sample probe; (4) a dilution probe control panel; (5) a gas flow monitor; and, (6) several gas flow regulators. The upgrade will also require the installation of appropriate computer software.

Following the installation of hardware and software, Bunge will have the monitor certified. The certification process will include: (1) the preparation and submittal of an initial monitoring plan to the IEPA; (2) the preparation and submittal of a certification test notice to the Illinois EPA; and, (3) certification testing. The testing will include bias testing, flow meter accuracy testing, four-load NOx emission rate testing and heat input measurement testing, RATA testing, 7-day drift testing, cycle response time testing, linearity (calibration error) testing, and data acquisition and handling system verification testing on the components of the monitoring system.

With respect to the timing of the upgrade to a Part 75 monitor, the rules do not seem to address a situation such as the matter at hand. Since the rules provide no guidance on this issue, we will assume that so long as Bunge has completely installed and certified the monitor prior to an ozone season, the monitor would be considered to be installed in a timely manner with respect to Bunge's receipt of an allocation of NOx Allowances for such ozone season. We also understand that, pursuant to the applicability determination letter from L. Kroack, dated December 13, 2005, Bunge will continue to be exempt from the NOx Trading Program until such time as the current Illinois NOx trading regulations are amended to include the CFB boiler and the United States Environmental Protection Agency increases the Illinois NOx budget to include allowances for the CFB boiler. If the assumptions contained in this paragraph are not correct, please advise us as soon as possible.

We thank you again for the opportunity to meet with you with regards to this matter. We hope that the discussions set forth above and the attached documentation will assist the IEPA in moving forward with this matter. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Gale W. Newton

GWN:cmw
attachments

pc: Loren L. Polak (via U.S. Mail; w/attachments)
Beverly D. Garner, Esq. (via U.S. Mail; w/attachments)

BUNG:005/Corr/Beckstead 2nd Draft Letter - IEPA



Electronic Filing - Received, Clerk's Office, August 3, 2009

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

(217) 782-3397
(217) 782-9143 TDD

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Bunge: D05
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Made copy for GWN.

December 13, 2005

Ms. Katherine D. Hodge
Hodge Dwyer Zeaman
3150 Roland Avenue
Springfield, Illinois 62705-5776

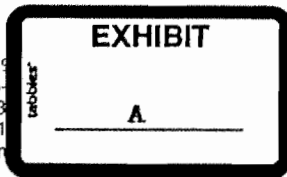
Dear Ms. Hodge:

Director Scott has asked that I respond to your letter of September 20, 2005. Bureau of Air staff has reviewed your letter requesting an applicability determination as to whether the circulating fluidized bed, coal-fired boiler ("CFB Boiler") in Danville (ID Number 183020ABT) owned and operated by Bunge Milling, Inc. ("Bunge"), is subject to the Illinois NOx trading regulations under the NOx Budget Trading Program. From the information provided in the letter and a review of the air regulations at 35 IAC Part 217, Bunge is not currently covered by the NOx Budget Trading Program.

According to Bunge, the CFB Boiler commenced operation in 1986, has a maximum design heat input of 322.5 mmBtu/hr, and serves one generator having a nameplate capacity of 20 MWe, which has produced some electricity for sale. Illinois' NOx Budget Trading Program regulations are set forth in Subparts A (general provisions), U (for non-EGUs), and W (for EGUs) of Part 217.

Under Section 217.454, Subpart U applies to a unit with maximum design heat input of greater than 250 mmBtu/hr if (1) the unit is listed in Appendix E of the Subpart or (2) the unit is not listed and serves a generator producing electricity for sale and having a nameplate capacity of 25 MWe or less and the potential to use no more than 50 percent of the potential electrical output capacity of the unit. There are some other categories of units subject to Subpart U listed as well, but they are not relevant to the evaluation of Bunge's status.

Section 217.454(a)(2)(B) provides that 50 percent of potential electrical output capacity is equal to the maximum design heat input multiplied by 0.0488 MWe/mmBtu. The CFB Boiler is not listed in Appendix E, and 50% of its potential electrical output capacity, based on information provided by Bunge, equals 15.738 MWe - thus the nameplate capacity of the associated



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ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3300
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 782-3397
MARION - 2309 W. Main Street, Marion, IL 62959 - (217) 993-7200

V. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
City St., Peoria, IL 61614 - (309) 693-5463
25 South First Street, Champaign, IL 61820 - (217) 278-5800
09 Mall Street, Collinsville, IL 62234 - (618) 346-5120
518) 993-7200

generator is greater than 50 percent of the potential capacity. Consequently, the CFB Boiler is not subject to Subpart U.


Under Section 217.754, Subpart W applies to a unit with a maximum design heat input greater than 250 mmBtu/hr, commencing operation on or after January 1, 1999, and serving a generator having a nameplate capacity of 25 MWe or less and having the potential to use more than 50% of the potential electrical output capacity of the unit. There is another category of units subject to Subpart W listed as well, but that category is not relevant to the evaluation of Bunge's situation.

Because the CFB Boiler commenced operation prior to 1999, it is not subject to Subpart W. Thus, since the unit is not currently subject to either Subpart U or Subpart W, the CFB Boiler is not currently subject to the NOx Budget Trading Program.

However, this exclusion of Bunge from the program was inadvertent and the Illinois EPA believes that Bunge's boiler should be a listed non-EGU in Appendices D and E of Part 217. As such, the Illinois EPA plans to correct this exclusion in the upcoming amendments to Part 217. To accomplish this, the Illinois EPA will work with Bunge and will request that U.S. EPA add the appropriate number of NOx allowances for Bunge's CFB Boiler to the statewide NOx budget for non-EGUs. Once this is accomplished, the Illinois EPA will be able to allocate NOx allowances to Bunge. Until such time as the current Illinois NOx trading regulations are amended to include Bunge in Appendices D and E of Part 217 and U.S. EPA increases Illinois' NOx budget to include the CFB Boiler, Bunge will continue to be exempt from the NOx Budget Trading Program.

We appreciate you bringing this situation to our attention and will work with you to resolve this issue.

Sincerely,


Laurel L. Kroack
Chief, Bureau of Air

cc: Dwight C. Alpern, USEPA
John Mooney, USEPA

g:\kk\Bloomberg\Hodge - Bunge-11-04



Electronic Filing - Received, Clerk's Office, August 3, 2009

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

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DEC 27 2005

HODGE DWYER ZEMAN
BUNGE:005

DEC 22 2005

REPLY TO THE ATTENTION OF
R-19J

Katherine D. Hodge
Hodge, Dwyer, Zeman, Attorneys at Law
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776

Re: Request for Applicability Determination of the Illinois NOx Trading Program Regulations for the CFB Boiler at the Bunge Milling, Inc. Facility in Danville, Illinois

Dear Ms. Hodge:

This letter responds to the Bunge North America (Bunge) September 20, 2005, letter addressed to the U.S. Environmental Protection Agency (U.S. EPA) Region 5. The letter requests a determination of applicability of the Federal and Illinois regulations concerning the NOx Budget Trading Program to the circulating fluidized bed (CFB) coal-fired boiler ("CFB Boiler") unit at the Bunge Milling, Inc. facility located in Danville, Illinois. Specifically, Bunge's September 20, 2005, letter makes the following request:

Determine whether the Illinois NOx State Implementation Plan (SIP) regulations (35 Ill. Admin. Code § 217.454 and 35 Ill. Admin. Code § 217.754), as written, apply to the CFB Boiler.

Based on information provided in Bunge's September 20, 2005, letter, the federal NOx Budget Trading Program for State Implementation Plans rule (40 C.F.R. Part 96) does not apply where a State has developed its own NOx Trading Program rules and the U.S. EPA has approved the State rules (see 40 C.F.R. § 96.1). Illinois developed its own State Implementation Plan (SIP) rules for a NOx Trading Program in 35 Ill. Admin. Code (IAC) Part 217, Subparts A, U, and W. These rules were adopted by the U.S. EPA Administrator on November 8, 2001 (see 66 FR 56449).

EXHIBIT
B

Determination:

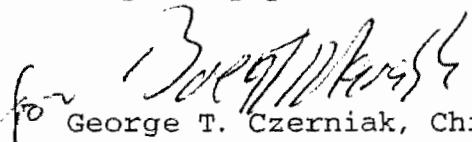
After reviewing the September 20, 2005, letter, U.S. EPA believes it is the responsibility of the State of Illinois to make the determination of applicability for the CFB

Boiler. U.S. EPA's decision is based on two facts: (1) 40 C.F.R. § 96.1, which says that 40 C.F.R. Part 96 does not apply when a state has developed its own rules and those rules have been approved by the Administrator; and (2) the Illinois NOx Trading Program rules that were approved by U.S. EPA on November 8, 2001 (see 66 FR 56449) specify that the State makes applicability determinations as part of its responsibility in the SIP.

On December 13, 2005, Illinois EPA mailed a determination letter to Bunge, and sent a copy of the determination letter to U.S. EPA, regarding Bunge's September 20, 2005 request. In the December 13, 2005 letter, Illinois EPA concluded that since the "nameplate capacity of the associated generator is greater than 50 percent of the potential capacity" and "because the CFB Boiler commenced commercial operation prior to 1999," the CFB Boiler "is not currently subject to either Subpart U or Subpart W, and thus the CFB Boiler is not subject to the NOx Budget Trading Program." U.S. EPA concurs with Illinois EPA's determination that the CFB boiler at the Bunge Milling, Inc. facility located in Danville, Illinois is not subject to the NOx SIP regulations as published in the Illinois SIP at 35 IAC Part 217, Subparts A, U, and W.

If you have any further questions regarding this issue please contact Brent Marable, Chief, Illinois/Indiana Section at 312-886-6812.

Very truly yours,

for 

George T. Czerniak, Chief
Air Enforcement and Compliance Assurance Branch

cc: Laurel L Kroack, Illinois EPA
Dwight C. Alpern, U.S. EPA

Electronic Filing - Received, Clerk's Office, August 3, 2009

COAL BTU MONTHLY ADJUSTMENT

Originator: Martin Rademacher

Date: 21-Jun-95

Copies: J. Antonini, ~~L. Dugger~~
R. Walden, M. Woods

COAL TREK BASE PRICE

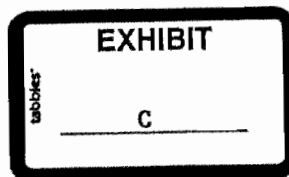
\$/Ton Btu/Lb \$/MMBtu
\$24.00 10,350.00 \$1.1594

TURRIS BASE PRICE

\$/Ton Btu/Lb \$/MMBtu
\$23.50 10,400.00 \$1.1298

NOTE: Adjustment made if the coal Btu/lb is greater than plus or minus 100 Btu/lb from the base price.

		QTY	%	%	%	HHV	MAF HHV	Adjusted	Total Monthly
		TONS	MOISTURE	ASH	SULFUR	BTU/LB	BTU/LB	\$/Unit	Adjustment
February	Black Beauty	6137.84	16.74	10.92	1.36	10540	14568		
February	Coaltrek	3859.03	14.86	14.91	2.72	10166	14475	\$23.5742	\$1,643.32
March	Black Beauty	4996.22	16.89	11.54	1.02	10444	14594		
March	Coaltrek	4995.98	15.31	14.04	2.49	10208	14448	\$23.6705	\$1,646.10
March	Wash Str Pile	623.39	17.62	13.63	2.13	9890	14384		
March	Composite	10615.59	16.19	12.84	1.77	10300	14513		
April	Coaltrek	4649.30	12.97	15.70	3.07	10074	14299	\$23.3604	\$2,973.83
April	Turris	4142.55	17.20	9.50	2.92	10489	14313	\$23.5000	\$0.00
April	Wash Str Pile	1220.73	17.85	13.21	2.29	9931	14403		
April	Composite	10012.58	15.32	12.83	2.91	10228	14317		
May	Coaltrek	3353.15	17.43	15.04	2.13	9702	14368	\$22.4973	\$5,038.90
May	Turris	5816.56	17.06	9.43	3.01	10482	14258	\$23.5000	\$0.00
May	Wash Str Pile	2320.22	17.53	12.77	1.96	10019	14372		
May	Composite	11783.66	17.26	11.77	2.52	10158	14316		
June	Coaltrek	74.56	17.35	13.02	1.76	10038	14415	\$23.2765	\$53.94
June	Turris	766.84	16.21	9.66	3.12	10564	14251	\$23.5000	\$0.00
June	Wash Str Pile	4645.35	16.12	13.20	1.80	10134	14338		
June	Composite	5486.75	16.15	12.70	1.98	10193	14327		



Electronic Filing - Received, Clerk's Office, August 3, 2009

COAL ANALYSIS, 1995 - JULY, AUGUST, SEPTEMBER					Copies:	J. Brown, R. Walden	
(Based on sampling as delivered)			originator: Jack Antonini			M. Woods	
		QTY	%	%	%	HHV	MAF HHV
WEEK END	SOURCE	TONS	MOISTURE	ASH	SULFUR	BTU/LB	BTU/LB
7/2/95	Turris	359.66	16.35	9.58	3.12	10566	14264
7/9/95	Turris	1265.48	14.74	8.76	3.09	10752	14054
7/9/95	Pet. Coke	254.89	6.44	0.33	4.75	14404	15449
7/9/95	Blend 90/10	223.47	13.91	7.92	3.26	11117.2	14193.5
7/16/95	Turris	2443.84	16.5	9.2	3.19	10553	14204
7/16/95	Pet. Coke	149.41	7.39	0.37	4.45	14305	15509
7/14/95	Blend 90/10	1541.41	15.59	8.32	3.32	10928.2	14334.5
7/23/95	Turris	2049.79	16.73	9.9	3.13	10411	14190
7/23/95	Pet. Coke	683.68	7.19	0.37	4.58	14320	15491
7/23/95	Blend 80/20	1987.87	14.82	7.99	3.42	11192.8	14450.2
7/30/95	Turris	1564.06	16.73	9.9	3.13	10411	14190
7/30/95	Pet. Coke	814.61	7.19	0.37	4.58	14320	15491
7/30/95	Blend 65/35	1599.75	13.39	6.56	3.64	11779.2	14645.4
7/31/95	Turris	229.08	16.73	9.9	3.13	10411	14190
7/31/95	Pet. Coke	145.9	7.19	0.37	4.58	14320	15491
7/31/95	Blend 50/50	1445.75	11.96	5.14	3.86	12365.5	14840.5
7/31/95	Coal Fines	206.56	16.22	16.54	2.17	8498	12679
7/31/95	Bld 50/35/15	598.75	13.31	7.56	3.49	11492.20	13759.8
Month	Turris	7911.91	16.32	9.49	3.14	10516	14176
Totals	Pet. Coke	2048.49	7.11	0.37	4.59	14329	15487
	Coal Fines	30.984	16.22	16.54	2.17	8498	12679
8/6/95	Turris	1941.11	15.68	9.85	3.26	10619	14257
8/6/95	Pet. Coke	105.79	7.1	1.07	4.61	14195	15457
8/6/95	Coal Fines	38.25	17.27	16.75	2.11	8366	12679
8/13/95	Turris	1005.4	16.63	9.75	3.12	10409	14139
8/20/95	Turris	104.1	16.63	9.75	3.12	10409	14139
8/27/95	Turris	2342.75	16	10.2	3.33	10476	14197
8/31/95	Turris	1437.85	15.91	10.44	3.29	10453	14192
Month	Turris	6831.21	15.99	10.08	3.27	10501	14184.8
Totals	Pet. Coke	105.79	7.1	1.07	4.61	14195	15457
	Coal Fines	38.25	17.27	16.75	2.11	8366	12679
9/3/95	Turris	1051.55	15.91	10.44	3.29	10453	14192
9/10/95	Turris	2309.7	16.75	9.66	3.07	10493	14258
9/10/95	Coal Fines	96.25	17.27	16.75	2.11	8366	12679
9/17/95	Turris	2393.9	16.32	9.64	3.06	10495	14174
9/24/95	Turris	2232.95	16.03	9.58	3.14	10642	14306
9/30/95	Turris	2147.7	15.63	9.99	3.44	10534	14161
Month	Turris	10135.8	16.17	9.79	3.18	10531	71091
Totals	Coal Fines	96.25	17.27	16.75	2.11	8366	12679
July Totals		9022.14	14.17	7.48	3.45	11371	14412
August		6975.25	15.86	9.98	3.28	10545	14196
September		10232.05	16.18	9.85	3.17	10432	14166
QUARTER COMPOSITE TOTALS			%	%	%	HHV	MAF HHV
		QTY TONS	MOISTURE	ASH	SULFUR	BTU/LB	BTU/LB
95-3		26229.44	15.40	9.07	3.30	10785	14259

COAL ANALYSIS, 1995 - OCTOBER, NOVEMBER, DECEMBER					Copies:		J. Brown, R. Walden	
(Based on sampling as delivered)					originator: Jack Antonini		M. Woods	
WEEK END	SOURCE	QTY TONS	% MOISTURE	% ASH	% SULFUR	HHV BTU/LB	MAF HHV BTU/LB	
10/1/95	TURRIS	293	15.63	9.99	3.44	10534	14161	
10/8/95	TURRIS	2414	17.01	10.15	3.38	10400	14278	
10/15/95	TURRIS	618	16.35	9.4	3.04	10618	14302	
10/15/95	BLACK BTY	1844	12.39	10.02	3.1	11361	14641	
10/22/95	BLACK BTY	1703	10.9	11.17	3.34	11399	14627	
10/22/95	TURRIS	298	16.35	9.4	3.04	10618	14302	
10/22/95	PET COKE	115	7.19	0.37	4.58	14320	15491	
10/29/95	BLACK BTY	1504	11.19	10.98	2.82	11310	14531	
10/29/95	TURRIS	77	16.35	9.4	3.04	10618	14302	
10/31/95	TURRIS	898	17.63	9.34	2.78	10418	14285	
MONTH TOT	TURRIS	4598	16.90	9.82	3.19	10459	11547	
	BLK BTY	5051	11.53	10.69	3.10	11359	14604	
	PET COKE	115	7.19	0.37	4.58	14320	15491	
	TOTAL	8782	14.01	10.16	3.16	10970	14458	
11/5/95	TURRIS	1407	17.63	9.34	2.78	10418	14285	
11/12/95	TURRIS	2211	16.26	9.07	2.99	10636	14247	
11/19/95	TURRIS	2443	15.32	9.33	3.06	10785	14313	
11/26/95	TURRIS	2485	15.85	9.4	3.24	10633	14225	
11/30/95	TURRIS	1987	16.21	8.28	3.00	10712	14185	
MONTH TOT	TURRIS	10533	16.12	9.10	3.04	10655.70	14247.83	
12/3/95	TURRIS	466	16.21	8.28	3.00	10712	14185	
12/3/95	PET COKE	45	4.74	0.66	4.63	14596	15427	
12/3/95	WOODCHPS	47	34.28	23.85	0.15	3998	9550	
12/10/95	TURRIS	2255	17.36	9.36	3.13	10380	14183	
12/10/95	PET COKE	365	4.74	0.65	4.63	14596	15427	
12/10/95	WOODCHPS	211	34.28	23.85	0.15	3998	9550	
12/10/95	80/10/10 BLD	1244	17.48	9.95	3.05	12714	14458	
12/10/95	75/15/10 BLD	1548	17.78	9.17	3.04	10507	14383	
12/17/95	TURRIS	2045	15.18	9.83	3.14	10676	14238	
12/17/95	PET COKE	463	4.74	0.65	4.63	14596	15427	
12/17/95	WOODCHPS	21	34.28	23.85	0.15	3998	9550	
12/17/95	65/25/10 BLD	1262	14.40	8.2	3.26	11322	14628	
12/24/95	TURRIS	1578	17.87	9.25	3.05	10391	14257	
12/24/95	BLACK BTY	1229	16.56	8.05	1.95	11063	14674	
12/31/95	TURRIS	1123	15.03	9.36	3.23	10715	14170	
12/31/95	BLACK BTY	1289	16.95	7.18	1.64	11136	14678	
MONTH TOT	TURRIS	7465	16.45	9.40	3.12	10535	14206	
	BLACK BTY	2518	16.76	7.60	1.79	11100	14677	
	PET COKE	873	4.74	0.65	4.63	14596	15427	
	WOODCHPS	279	34.28	23.85	0.15	3998	9550	
	80/10/10 BLD	1244	17.48	9.95	3.05	12714	14458	
	75/15/10 BLD	1548	17.78	9.17	3.04	10507	14383	
	65/25/10 BLD	1262	14.40	8.20	3.26	11322	14628	
OCTOBER		9762	14.01	10.16	3.16	10970	14458	
NOVEMBER		10533	16.12	9.10	3.04	10656	14248	
DECEMBER		11135	16.05	8.67	2.87	10817	14281	
QUARTER COMPOSITE TOTALS			%	%	%	HHV	MAF HHV	
		QTY TONS	MOISTURE	ASH	SULFUR	BTU/LB	BTU/LB	
95-4		31430	15.44	9.28	3.02	10811	14329	

Nox Allowance Calculations

Formula uncontrolled tons

$((TS * 2000 \text{ lb/ton} * \text{btu/lb}) / 1,000,000) * 0.69 \text{ lbNOx/mmbtu} / 2000 \text{ lb/ton} = \text{uncontrolled Nox Tons}$

Calculations uncontrolled tons

coal tons/season (TS)*	btu/lb**	mmBTU	AP 42/lb Nox mmbtu	uncontrolled Nox tons	
44449		10559	938,674	0.69	323.8

Formula Nox allowances

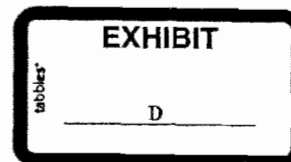
$UNOx * (1 - RC) * GF = \text{Nox Allowances}$

Calculations Nox allowances

uncontrolled Nox tons (UNOx)	required control (RC)	growth factor (GF)	Nox Allowances
323.8	0.6	0.791	102.4637745

*Includes 2,154 tons of pet coke and 165 tons of coal fines.

**Average value that includes btu values for coal, pet coke and coal fines.





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-7326

August 17, 2006

Ms. Mary Shellabarger
U.S. Environmental Protection Agency
Clean Air Markets Division
1200 Pennsylvania Avenue, NW
Mail Code 6204J
Washington, DC 20460

RECEIVED
AUG 22 2006
HODGE DWYER ZEMAN
GWD

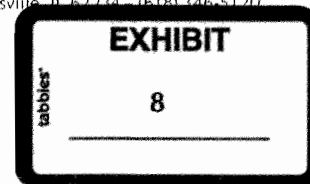
RE: NOx Budget Allowances
Bunge Milling, Inc
IL Facility ID #183020ABT

Dear Ms Shellabarger:

Illinois EPA is requesting that U.S.EPA increase the Illinois NOx SIP Call budget for non-EGUs from 4,856 to 4,957 or 101 allowances per year to include Bunge Milling, Inc in the NOx Budget Trading Program beginning with the ozone season of 2007.

Illinois EPA has reviewed the request made by Bunge Milling, Inc for these allowances and agrees that 101 accurately reflects the number of allowances that should have been included in Illinois' NOx budget for this source. (See Attachment 1: Letter from Hodge, Dwyer, Zeman dated May 3, 2006 with Exhibits A-D) The allowances are for a non-EGU circulating fluidized bed (CFB) boiler that has a heat input capacity of 322.5 million Btu per hour, as listed in Bunge's Clean Air Act Program Permit. This boiler began operating in 1990.

The exclusion of Bunge from the trading program was inadvertent. As Illinois' current NOx budget does not reflect inclusion of this source and Illinois EPA believes that Bunge's CFB boiler should be an affected non-EGU, Illinois EPA is requesting that U.S.EPA increase its NOx budget for Non-EGUs to reflect this source. Once U.S.EPA has included this source in Illinois' NOx budget, Illinois EPA will correct this exclusion by amending 35 Il. Adm. Code Part 217 and submitting the regulatory amendment to U.S.EPA as a SIP revision. Illinois EPA's most current regulatory proposal reflects that



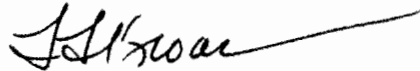
Electronic Filing - Received, Clerk's Office, August 3, 2009

Bunge should be an affected source and will be allocated NOx allowances after U.S.EPA provides such allowances to Illinois.

Attachment 2 provides detailed information regarding Bunge's CFB boiler.

If additional information is needed on this matter, please contact Gary Beckstead at (217) 524-4883.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Kroack", with a long horizontal flourish extending to the right.

Laurel L. Kroack
Chief, Bureau of Air

cc: Gale W. Newton
John Paskevicz, U.S. EPA
Cheryl Newton, U.S. EPA



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

(217) 782-5544

December 10, 2007

Mr. Gale W. Newton
Hodge Dwyer Zeman
3150 Roland Avenue
Springfield, Illinois 62705-5776

Dear Mr. Newton:

I am responding to your electronic mail of November 19, 2007, in which you shared a letter dated December 13, 2005, from the Illinois EPA indicating that it supported and would pursue a regulatory change giving an allocation of NO_x allowances under the NO_x Budget Trading Program to Bunge Milling, Inc. ("Bunge"). You and I also had an earlier related conversation as to whether the Illinois EPA should proceed with regulatory docket R06-22: NO_x Trading Program: Amendments to 35 Ill. Adm. Code Part 217. Circumstances have changed since the December 2005 letter was written, and the Illinois EPA's current position takes such changes into account.

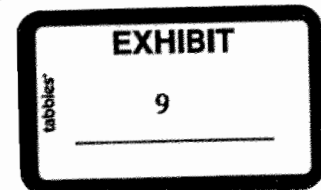
First, the NO_x Budget Trading Program as it applies to industrial boilers is scheduled to sunset at the conclusion of the 2008 control period. At that point, industrial boilers, including the unit at Bunge, will no longer be required to hold NO_x allowances and will not be allocated further NO_x allowances in Illinois.

Second, the Illinois EPA met its commitment to Bunge by requesting that USEPA approve additional allowances for Illinois' NO_x budget for industrial boilers to include allowances for this company. As the December 2005 letter indicated, the Illinois EPA is unable to allocate NO_x allowances unless USEPA populates the account. Our request that USEPA agree on such an approach was denied, as Kathy Hodge of your firm may be aware.

Under these circumstances, it would be useless to pursue the current amendments under proposal R06-22, as that docket merely provides a space holder (i.e., an asterisk) where a possible allocation could be documented. To summarize: USEPA has indicated that it will never provide the necessary NO_x allowances to populate the account and the applicable program sunsets in less than a year. In addition, all the other significant issues in R06-22 are moot or will be best addressed in the Illinois EPA's upcoming (Winter 2008) regulatory proposal for NO_x RACT for industrial boilers. Hence, the Illinois EPA plans to withdraw this regulatory proposal.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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Electronic Filing - Received, Clerk's Office, August 3, 2009

The Illinois EPA appreciates your continued patience and interest on behalf of your client to resolve this matter. However, as we have taken all possible steps available to us, we are now left in the position of taking the steps described above. Please let me know if you would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel L. Doctors", with a long horizontal flourish extending to the right.

Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel



HODGE • DWYER • ZEMAN

ATTORNEYS AT LAW

KATHERINE D. HODGE

E-mail: khodge@hdzlaw.com

August 27, 2008

Laurel L. Kroack, Esq.
Bureau Chief
Bureau of Air – MC #11
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

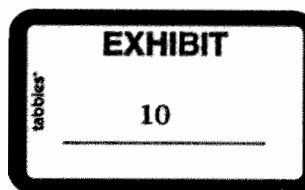
RE: NOx Budget Allowances
Bunge Milling, Inc.
Facility ID #183020ABT
Our File No. – BUNG:017

Dear Laurel:

This letter is written on behalf of our client, Bunge Milling, Inc. (“Bunge”). Specifically, Bunge would like to renew its request for 101 NOx SIP Call Program allowances for Bunge’s non-EGU circulating fluidized bed boiler (“CFB Boiler”) at the Danville, Illinois facility. As you may recall, by letter dated August 17, 2006, you formally requested that the United States Environmental Protection Agency (“USEPA”) increase the Illinois NOx SIP Call budget for non-EGUs from 4,856 to 4,957 per year in order to include Bunge’s CFB Boiler. Please see a copy of your letter to the USEPA, dated August 17, 2006 (and its attachments), attached hereto as Attachment 1. In addition, Bunge renews its request that the Illinois Environmental Protection Agency (“Illinois EPA”) move forward with action to seek amendments to the Illinois NOx SIP Call Program for non-EGUs (within the rulemaking that is currently before the Illinois Pollution Control Board, R06-22), to include Bunge’s CFB Boiler.

By way of background, Bunge’s CFB Boiler has a heat input capacity of 322.5 million Btu per hour, and commenced operation in 1986. Bunge’s CFB Boiler should have been covered by the Illinois NOx SIP Call Program, but was inadvertently excluded due to the unintended interplay of applicability requirements for non-EGUs in Subpart U (of Part 217) and for EGUs in Subpart W (of Part 217). The current NOx budget for regulated non-EGUs in Illinois does not reflect inclusion of Bunge’s CFB Boiler. Nearly three years ago, in late 2005, the Illinois EPA committed to “work with Bunge” to secure the necessary NOx allowances for Bunge’s CFB

3150 ROLAND AVENUE ▲ POST OFFICE BOX 5776 ▲ SPRINGFIELD, ILLINOIS 62705-5776
TELEPHONE 217-523-4900 ▲ FACSIMILE 217-523-4948



Laurel L. Kroack, Esq.
August 27, 2008
Page 2

Boiler from the USEPA, and to seek amendment of the Illinois NOx SIP Call Program regulations to include Bunge's CFB Boiler. See your letter dated December 13, 2005, included in Attachment 1 to this letter. In reliance upon this commitment, Bunge spent considerable resources to install and calibrate Part 75 monitors in order to demonstrate compliance with the NOx SIP Call requirements. Finally, on this point, Bunge understands that the USEPA had indicated, at least informally, that it would not grant your August 17, 2006 request for NOx allowances for Bunge's CFB Boiler, because the USEPA believed the Illinois NOx SIP Call Program for non-EGUs would be ending at the end of the 2008 control period (with the implementation of the federally required Clean Air Interstate Rule ("CAIR")), especially since the Illinois EPA had declared its intent not to cover non-EGUs by CAIR requirements.

As you know, Bunge has made a number of requests over the past two years for the Illinois EPA to renew its request, and was advised in late 2007 that the Illinois EPA had "taken all steps available to us." See the attached letter from Rachel Doctors, dated December 10, 2007, attached hereto as Attachment 2. The Illinois EPA based its conclusion upon its intent, at that time, to sunset the NOx SIP Call Program for non-EGUs at the end of the 2008 control period, as well as the USEPA's refusal to grant the Illinois EPA's request. Again, as set forth above, the USEPA's refusal apparently was based upon the sunset of the non-EGU program in Illinois. Also, in Ms. Doctors' December 10, 2007 letter, she stated the Illinois EPA intended to withdraw its pending proposal to amend the Illinois NOx SIP Call Program regulations (R06-22), because all other significant issues in the proceeding were moot or best addressed in the upcoming NOx RACT proceeding.

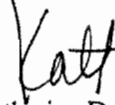
However, on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") vacated the USEPA CAIR. The D.C. Circuit stated in its opinion that "[i]n the absence of CAIR, the NOx SIP Call trading program will continue, because [U.S.] EPA terminated the program only as part of the CAIR rulemaking. CAIR, 70 Fed. Reg. at 25,317 (codified at 40 C.F.R. § 51.121(r)). The continuation of the NOx SIP Call should mitigate any disruption that might result from our vacating CAIR at least with regard to NOx." State of North Carolina v. Environmental Protection Agency, No. 05-1244, 59-60 (D.C. Cir. 2008).

Bunge understands that, in the absence of CAIR, the Illinois EPA now intends to continue to operate its NOx SIP Call Program for non-EGUs. So, the USEPA's prior basis for refusing to allocate the NOx allowances is not valid at this time. In light of the continuation of the Illinois NOx SIP Call Program for non-EGUs, Bunge respectfully suggests that the other significant issues in the pending proceeding (R06-22) are not moot and that such other significant issues, as well as this issue related to Bunge's CFB Boiler, are best addressed in R06-22. Thus, Bunge requests that the Illinois EPA renew its prior request to the USEPA for 101 NOx SIP Call Program allowances for Bunge's CFB Boiler. (As you can see, we are sending a copy of this letter to Ms. Mary Shallabarger at the USEPA Clean Air Markets Division.) In addition, Bunge requests that the Illinois EPA move forward with action to seek amendments to the Illinois NOx SIP Call Program for non-EGUs, to include Bunge's CFB Boiler.

Laurel L. Kroack, Esq.
August 27, 2008
Page 3

On behalf of Bunge, I would like to thank you for your consideration of this request. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Katherine D. Hodge

KDH:LCL:plt
attachments

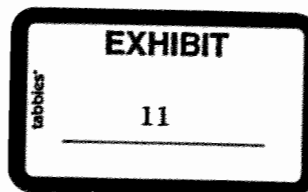
pc: Ms. Mary Shellabarger (via U.S. Mail; w/attachments)
Beverly Garner, Esq. (via U.S. Mail; w/attachments)
Mr. Loren Polak (via U.S. Mail; w/attachments)
Mr. Jim Burris (via U.S. Mail; w/attachments)

BUNG:017/Corr/Kroack Ltr 01 – NOx Budget Allowance Request

Calculations for Appendix E to IERG's Alternative Proposal

	Allowances	Explanation for Adjustment
Current Appendix E Total Budget	4882	
Add allowances for Chicago Coke Company, Inc., successor to LTV Steel Company	+ 60	USEPA adjusted the Illinois budget to include allowances for LTV Steel. See 66 Fed. Reg. 56449 (Nov. 8, 2001)(Exhibit 2 to this Motion).
Remove University of Illinois – Abbott Power Plant	- 86	USEPA removed University of Illinois from list of Subpart U sources. See 66 Fed. Reg. 56449 (Nov. 8, 2001) (Exhibit 2 to this Motion).
Subtotal	4856	
Allowances for Bunge Milling, Inc.*	+101	Illinois EPA requested that USEPA include 101 allowances for Bunge in the budget. See Letter from L. Kroack to M. Shellabarger (Aug. 17, 2006) (Exhibit 8 to this Motion) and Statement of Reasons, R06-22 at 9.
Allowances for Flint Hills Resources, LP*	+14	Illinois EPA failed to include Flint Hills, which owns and operates a budget unit, in Appendix E. See Statement of Reasons, R06-22 at 9 and Motion for Expedited Action at 22-23.
Allowances for Citgo Petroleum Corporation*	+16	Additional allowances are necessary based on representative operation of the emission unit. See Motion for Expedited Action at 23-24.
Remove Jefferson Smurfit Corporation	- 39	Facility does not own or operate a budget unit. See Motion for Expedited Action at 23.
Total Allowances for Revised Budget	4948	

* For a more detailed explanation regarding the proposed allocation, see Motion for Expedited Action at 22-26.



STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

AFFIDAVIT OF DEIRDRE K. HIRNER

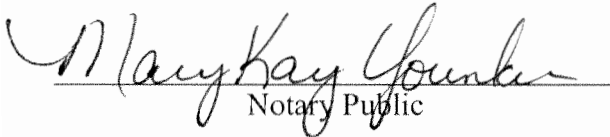
I, Deirdre K. Hirner, being first duly sworn on oath, affirm that I participated in the preparation and review of the Motion for Expedited Action of the Illinois Environmental Regulatory Group's Alternative Proposal, and based upon my personal knowledge and belief, affirm that the facts set forth therein are true and correct.

FURTHER AFFIANT SAYETH NOT.

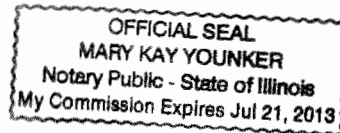


Deirdre K. Hirner

Subscribed and sworn before me
this 3rd day of August, 2009.



Notary Public



CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached ENTRY OF APPEARANCE OF ALEC M. DAVIS, ENTRY OF APPEARANCE OF MONICA T. RIOS, MOTION FOR EMERGENCY RULE and MOTION FOR EXPEDITED ACTION ON THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S ALTERNATIVE upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on August 3, 2009; and upon:

Timothy J. Fox, Esq.
Hearing Officer
Illinois Pollution Control Board
2125 South First Street
Champaign, Illinois 61820

Kathleen C. Bassi, Esq.
Schiff Hardin, LLP
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6473

Rachel L. Doctors, Esq.
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Mitchell Cohen, Esq.
General Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on August 3, 2009.

/s/Katherine D. Hodge

Katherine D. Hodge