

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Mr. John T. Therriault Timothy J. Fox, Esq.
Assistant Clerk of the Board Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
100 West Randolph Street 2125 South First Street
Suite 11-500 Champaign, Illinois 61820
Chicago, Illinois 60601 **(VIA FIRST CLASS MAIL)**
(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **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 PROPOSAL**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: August 3, 2009

By: /s/ Katherine D. Hodge
One of Its Attorneys

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ENTRY OF APPEARANCE OF ALEC M. DAVIS

NOW COMES Alec M. Davis, of the ILLINOIS ENVIRONMENTAL REGULATORY GROUP, and hereby enters his appearance in this matter on behalf of the Illinois Environmental Regulatory Group.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: August 3, 2009

By: /s/ Alec M. Davis
Alec M. Davis

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ENTRY OF APPEARANCE OF MONICA T. RIOS

NOW COMES Monica T. Rios, of the law firm of HODGE DWYER &
DRIVER, and hereby enters her appearance in this matter on behalf of the Illinois
Environmental Regulatory Group.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: August 3, 2009

By: /s/ Monica T. Rios
Monica T. Rios

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MOTION FOR EMERGENCY RULE

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, Alec M. Davis and HODGE DWYER & DRIVER, and hereby requests the Illinois Pollution Control Board (“Board”) amend 35 Ill. Admin. Code Part 217, Subpart U, as detailed herein, pursuant to the Board’s authority to adopt emergency regulations as provided in 35 Ill. Admin. Code § 102.612, Section 5-45 of the Illinois Administrative Procedure Act (“IAPA”), 5 ILCS 100/5-45, and Section 27(c) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/27(c).

In support of this Motion, IERG states as follows:

I. INTRODUCTION

1. In Illinois, the General Assembly required the adoption and implementation of a Nitrogen Oxide (“NO_x”) State Implementation Plan (“SIP”) Call Budget Trading Program for Non-Electric Generating Units (“Non-EGUs”) pursuant to Section 9.9 of the Act, 415 ILCS 5/9.9, and the Trading Program is implemented in 35 Ill. Admin. Code Part 217 Subpart U: NO_x Control and Trading Program for Specified NO_x Generating Units (“Subpart U”).

2. The current version of Subpart U requires NO_x SIP Call budget units to hold allowances from the United States Environmental Protection Agency (“USEPA”) administered NO_x Budget Trading Program. See 35 Ill. Admin. Code § 217.456(d).

3. Specifically, Section 217.456(d) of Subpart U currently states the following with regard to NO_x SIP Call 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 (c) 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.

35 Ill. Admin. Code § 217.456(d). (Emphasis added.)

4. As discussed in more detail below, Illinois industry, including a number of IERG member companies, will be affected by the fact that the current version of Subpart U is still a valid and applicable regulation in Illinois. According to the current version of Section 217.456(d), Illinois facilities regulated by Subpart U must hold NO_x SIP Call allowances for the 2009 season on November 30, 2009. 35 Ill. Admin. Code § 217.456(d). In addition, most facilities subject to Subpart U also have NO_x SIP Call budget unit requirements in their Clean Air Act Permit Program (“CAAPP”) permits. Therefore, the current version of Subpart U and CAAPP permit requirements remain enforceable by the Illinois Environmental Protection Agency (“Illinois EPA”), the USEPA, and citizen groups.

5. The USEPA stated in its Clean Air Interstate Rule (“CAIR”) rule that it would no longer issue NO_x SIP Call allowances after the 2008 ozone season; however, because of challenges to the federal CAIR rule, Illinois industry did not know until late in

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December 2008, what the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) would do with the vacatur of the CAIR rule. If the CAIR rule was vacated, the USEPA would have continued with NOx SIP Call allowances.

However, the CAIR rule was not vacated, and therefore, remains in place in its final form. Accordingly, rulemakings continued to move forward for the federal CAIR program for Electric Generating Units (“EGUs”).

6. The federal NOx SIP Call trading program for non-EGUs ceased to exist after the 2008 ozone season. However, the Illinois EPA has failed to take any action to establish a new regulatory mechanism for issuing NOx SIP Call allowances to sources subject to Subpart U for the 2009 ozone season.

7. In order for Illinois industry, including a number of IERG member companies, to attempt to comply with the current version of Subpart U, they may purchase CAIR NOx allowances, although, the question still remains whether such purchases would be deemed in compliance with a requirement to hold NOx SIP Call allowances as required by the current Subpart U rules. In addition, as IERG understands, unused NOx SIP Call allowances issued during previous years are being converted to CAIR allowances so even if impacted sources attempted to purchase NOx SIP Call allowances for the 2009 ozone season, there may not be enough NOx SIP Call allowances on the market to buy without receiving an allocation for 2009 from the Illinois EPA.

8. Should facilities purchase CAIR NOx allowances in an attempt to comply with their current Subpart U NOx SIP Call requirements, facilities will be unable to demonstrate compliance since CAIR compliance accounts into which CAIR NOx

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allowances could be distributed do not exist for impacted facilities. It is our understanding that the USEPA will not establish CAIR compliance accounts for Illinois NOx SIP Call budget units until a rule is in place at the state level that provides for the allocation of CAIR NOx allowances to Non-EGUs.

9. The purchase of CAIR NOx allowances presents an unreasonable hardship for NOx SIP Call budget units since sources subject to Subpart U have not planned for such a large expenditure. The sources have relied on the allocation of allowances by the Illinois EPA to their facilities without the imposition of a fee for the allowances. Now, because of the Illinois EPA's failure to adopt a rule to bring NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program, sources subject to Subpart U may have to purchase CAIR allowances, which, as discussed, may not be sufficient to demonstrate compliance with the current Subpart U.

10. In addition, those IERG member companies that are publicly held companies would have to disclose this potential liability on Securities and Exchange Commission ("SEC") filings. Specifically, such companies would be required to identify "known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way." See 17 C.F.R. § 229.303 (Regulation S-K, Item 303).

11. As referenced above, Section 9.9 requires that the Agency propose and the Board adopt regulations to implement a NOx trading program. 415 ILCS 5/9.9. The failure of Illinois EPA to adopt regulations for the NOx trading program that meet and implement the applicable federal requirements for the NOx SIP Call is a violation of the statutory mandate in Section 9.9 of the Act and renders the Illinois NOx trading program

noncompliant and inoperable. Since the USEPA does not administer the NOx Budget Trading Program and there is no state mechanism currently available that provides for the issuance of CAIR allowances to sources subject to Subpart U, an emergency rule is necessary in order to require that the Illinois EPA distribute allowances to impacted facilities and prompt the USEPA to establish CAIR compliance accounts for such facilities.

12. Therefore, in an effort to develop a quick yet thorough solution to this issue and maintain compliance with the statutory mandate set forth in Section 9.9 of the Act, IERG respectfully requests the Board, pursuant to its authority to adopt an emergency rule, to replace the current version of Subpart U with a revised Subpart U, attached hereto as Exhibit 1, 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.

II. HISTORY OF THIS PROCEEDING

13. Simultaneously with this Motion, IERG filed a Motion for Expedited Action on IERG's Alternative Proposal ("Motion for Expedited Action") with the Board. The Motion for Expedited Action requests that the Board take expedited action on IERG's alternative proposal to the Illinois EPA's proposal in this rulemaking. The Motion for Expedited Action provides a detailed history of this rulemaking, background regarding IERG's alternative proposal, the purpose and effect of the alternative proposal, and a summary of proposed amendments. IERG hereby incorporates by reference the Motion for Expedited Action for consideration by the Board as part of this Motion since

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the information in the Motion for Expedited Action is relevant to this Motion for Emergency Rule.

14. On September 7, 2007, Illinois adopted amendments to 35 Ill. Admin. Code Part 225 to implement the sulfur dioxide (“SO₂”), NO_x annual, and NO_x ozone season trading programs under CAIR, applicable only to EGUs. 31 Ill. Reg. 12864 (Sept. 7, 2007).

15. 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 NO_x SIP Call. Illinois’ CAIR NO_x ozone season trading program addresses the emissions from EGUs and do [sic] not address emissions from non-EGUs that are covered by the NO_x SIP Call trading program.

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

16. Therefore, while the Illinois EPA took action to establish a NO_x trading program for EGUs, it took no action to establish a similar trading program for Non-EGUs even though it knew, as a result of the adoption of the federal CAIR in May 2005, that some action would need to be taken with regard to Non-EGUs. 70 Fed. Reg. 25162 (May 12, 2005). The Illinois EPA, instead, waited for the USEPA to take action in regard to CAIR. See Status Report, In the Matter of NO_x Trading Program: Amendments to 35 Ill. Adm. Code Part 217, R06-22 (Ill.Pol.Control.Bd. Oct. 30, 2008)(rulemaking hereafter cited as R06-22) and Status Report, R06-22 (Ill.Pol.Control.Bd. Mar. 9, 2009); see also Motion for Expedited Action, incorporated by reference (discussing the Illinois EPA’s status reports filed with the Board in this matter.)

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17. The USEPA has spoken as to the issue of what would be required to address emissions from Non-EGUs under the CAIR rule:

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.

18. The USEPA has further indicated how a state can meet the requirements of the NOx SIP Call for Non-EGUs through participation in the CAIR ozone season 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; and (2) 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.

19. In the Status Report filed with Hearing Officer Fox on March 9, 2009, Illinois EPA acknowledged the need to replace Subpart U with a new rule, and indicated that the timetable for replacing Subpart U was Spring 2009. Status Report, R06-22 (Ill.Pol.Control.Bd. Mar. 9, 2009). However, as of the date of this Motion for Emergency Rule, Illinois EPA has taken no action to replace Subpart U and establish a new regulatory mechanism for issuing NOx allowances for the 2009 ozone season to sources subject to Subpart U. Further, to date, the Illinois EPA has not submitted a SIP Revision

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deleting the requirements related to the NOx SIP Call Budget Trading Program for Non-EGUs and replacing them with new requirements achieving the same level of reduction.

20. In the absence of a new regulatory mechanism for issuing NOx allowances, each ton of NOx emitted during the control period ending on November 30, 2009, constitutes a separate violation of the Act, as set forth in Section 217.465(d)(3). *See* 415 ILCS 5/42(a) (any person violating the Act is subject to civil penalties of \$50,000 per violation and \$10,000 for each day such violation continues). However, as stated above, even if sources purchase CAIR NOx allowances, it is uncertain whether such purchases would be deemed in compliance with the requirement to hold NOx SIP Call allowances, and even if holding CAIR NOx allowances meets the requirements of Subpart U, at this time, CAIR compliance accounts do not exist for Illinois' NOx SIP Call budget units because the USEPA has not established such accounts due to the failure of the Illinois EPA to take action to bring NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program.

21. Thus, there is an urgent need for the development of an emergency rule to establish a NOx trading program for the 2009 ozone season, which ends on September 30, 2009.

22. The amendments, as described in Exhibit 1, proposed by IERG comply with the approach suggested by the USEPA to satisfy the NOx SIP Call requirements by bringing NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program using the same Non-EGU budget, with minor exceptions (as explained in the Motion for Expedited Action, incorporated by reference in paragraph 13 above) and applicability requirements that are in the existing Subpart U.

III. THE BOARD MUST ADOPT AN EMERGENCY RULE ESTABLISHING A NO_x TRADING PROGRAM FOR THE 2009 OZONE SEASON

23. Section 102.612 of the Board's regulations provides:
- a) *When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the IAPA [415 ILCS 27(c)].*
 - b) *When the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay [415 ILCS 5/27(c)]. The Board will proceed with any required hearings while the regulation continues in effect.*

35 Ill. Admin. Code § 102.612.

24. Section 5-45 of the IAPA provides, in pertinent part:
- (a) "Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare.
 - (b) If any agency finds that an emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 [5 ILCS 100/5-40] and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing a notice of emergency rulemaking with the Secretary of State under Section 5-70 [5 ILCS 100/5-70]. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. . . . Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 5-65 [5 ILCS 100/5-65] or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons for the finding shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.
 - (c) An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 [5 ILCS 100/5-40] is not precluded.

5 ILCS 100/5-45.

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25. Section 27(c) of the Act provides, in pertinent part:

When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the Illinois Administrative Procedure Act [*5 ILCS 100/5-45*].

415 ILCS 5/27(c).

26. An “emergency” is present, justifying the employment of the emergency rulemaking procedures under Section 5-40 of the IAPA, when “there exists a situation which reasonably constitutes a threat to the public interest, safety or welfare.” Citizens for a Better Environment, et al. v. Pollution Control Board, et al., 152 Ill. App. 3d 105, 504 N.E.2d 166, 169 (1st Dist. 1987) (hereafter “CBE”) (Emphasis in original.) (holding that emergency rules implementing Section 39(h) were invalid because no emergency existed).

27. In CBE, the plaintiffs appealed an order of the Board adopting an emergency rule establishing regulations to implement Section 39(h) of the Act. Id. at 108. CBE argued that the Board lacked authority because “there was no emergency, as defined by section 5.02¹ of the IAPA, to justify bypassing the general notice-and-comment rulemaking procedures.” Id. at 109. The Board argued that the emergency rulemaking was proper because the emergency rules clarified Section 39(h), would reduce the “numbers of appeals to the Board” regarding waste stream authorizations, would ease the “transition period when final rules [were] adopted,” and gave effect to Section 39(h) since the “argument [could] be made that section 39(h) [was] not self-executing.” Id.

¹ Section 5.02 of the IAPA was renumbered to Section 5-45 in 1991. See Public Act 87-823 (Dec. 16, 1991).

28. The Court concluded that “the need to adopt emergency rules in order to alleviate an administrative need, which, by itself, does not threaten the public interest, or welfare, does not constitute an ‘emergency.’” Id. The Court, however, stated in regards to the delay in initiating the rulemaking,² “We do not hold that in all instances of delay the emergency rulemaking powers of section 5.02 cannot be utilized. Rather, only when the delay has resulted in a situation that threatens the public interest, safety, or welfare is the use of section 5.02 proper.” Id. at 110. Thus, CBE establishes that an emergency rulemaking is inappropriate to alleviate administrative needs only, but may be appropriate in the instance where failure to promulgate a rule would threaten the public interest.

29. Unlike in CBE, the subject of this rulemaking is not solely administrative. The Illinois EPA’s failure to bring NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program has created a situation whereby the Illinois NOx SIP Call requirements remain in effect, and sources subject to such requirements must comply with Subpart U or face potential liability for not doing so. By failing to establish a NOx trading program for Non-EGUs, Section 9.9 of the Act is rendered not only inoperable, but meaningless. Failure on the part of the Illinois EPA to give full effect to Section 9.9 of the Act defies the public interest, specifically those interests of NOx SIP Call budget units that must comply with Subpart U or face potential liability for not doing so. This is more than a mere administrative deficiency on the part of the Agency, as facilities that own or operate NOx SIP Call budget units in the state of Illinois will face substantive impacts which constitute a threat to the public interest. Unlike the situation in CBE

² The Court explained: “In this case section 39(h) was enacted in 1981 and was to become effective almost six years later on January 1, 1987. Nevertheless, work on implementation rules as to section 39(h) did not actually begin until June of 1986 and rules were not issued until October of 1986.” Id. at 110.

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where, according to the Board, it was clarifying Section 39(h) of the Act and preventing confusion and appeals in the future by adopting emergency rules, here, the Illinois EPA has failed to adhere to Section 9.9 of the Act, which mandates the implementation of a NOx trading program.

30. In the past, the Board has issued emergency rules based on the threat of economic hardship and potential liability to affected facilities, which were determined to have constituted a threat to the public interest warranting immediate action. In In the Matter of: Emergency Rule Amending the Stage II Gasoline Vapor Recovery Rule in the Metro-East Area, 35 Ill. Adm. Code 219.586(d), the Board found that uncertainty as to the USEPA's position regarding the promulgation of court-mandated onboard vapor recovery rules resulted in a situation where gas stations in the Metro-East were forced to make significant capital outlays to meet a compliance deadline to install Stage II vapor recovery equipment, which outlays would be unnecessary if the USEPA promulgated onboard vapor recovery rules. In the Matter of: Emergency Rule Amending the Stage II Gasoline Vapor Recovery Rule in the Metro-East Area, 35 Ill. Adm. Code 219.586(d), R93-12 at *5 (Ill.Pol.Control.Bd. May 20, 1993). In adopting an emergency rule changing the compliance deadline, the Board held that:

Emergency rulemaking by the Board is justified when there is a threat to the public interest. The record in this case demonstrates that facilities in the Metro-East area that should have complied with Stage II vapor recovery requirements by May 1, 1993, would suffer extreme economic hardship if forced to comply at this time. The court mandate for USEPA to promulgate onboard controls, which potentially may eliminate the need for Metro-East facilities to comply with Stage II requirements, creates intolerable uncertainty until the USEPA provides guidance. Moreover, the affected facilities have been placed in a position where they are subject to legal action by the Agency, or any citizen, if they fail to comply with the Stage II requirements which should have taken effect on May 1, 1993.

Id. at *8. (Emphasis added.).

31. In addition, in In the Matter of: Emergency Rule Amending 7.2 psi Reid Vapor Pressure Requirement in the Metro-East Area, 35 Ill. Adm. Code 219.585(a), the Board granted an emergency rule to address inconsistency between federal and state annual compliance dates for supplying lower RVP gasoline and alleviated the hardships to refiners, distributors, and bulk gasoline terminals resulting from the inconsistency in compliance dates. In the Matter of: Emergency Rule Amending 7.2 psi Reid Vapor Pressure Requirement in the Metro-East Area, 35 Ill. Adm. Code 219.585(a), R95-10 at *3-5 (Ill. Pol.Control.Bd. Feb. 23, 1995).

32. Here, as in the two emergency rulemakings described above, economic hardship and potential for liability experienced by industrial facilities is a threat to the public interest. Owners and operators of NOx SIP Call budget units subject to the current Subpart U will undoubtedly face financial hardship should the sources be forced to purchase CAIR allowances in an attempt to comply with the requirement that sources hold NOx SIP Call allowances on November 30, 2009. In the past, sources have not had to purchase NOx SIP Call allowances since by rule, the allowances were distributed directly from the Illinois EPA to the applicable source. Now, considering the economic times, and the fact that the sources have relied on the allowance distribution from the Illinois EPA, and consequently, did not plan for such a large expenditure for the purchase of allowances, the purchase of CAIR NOx allowances poses a threat to the financial interest of impacted sources. Further, as referenced, even if the sources choose to purchase CAIR allowances in an attempt to comply with Subpart U, there is no

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mechanism by which to demonstrate compliance because sources do not have CAIR compliance accounts in which to hold the allowances.

33. The threat to the public interest is also recognizable in the potential liability sources subject to Subpart U will face if they do not hold allowances on November 30, 2009 as required by Subpart U. At that time, sources not holding NOx allowances will be in violation of not only Subpart U, but also their CAAPP permits. USEPA, the Illinois EPA, and third parties may all seek enforcement against facilities for violations of the regulations and CAAPP permits. In addition, the SEC requires potential lawsuits to be disclosed in filings, which can impact the source's financial future.

34. Analogous to the issues in the R93-12 rulemaking, in this case, industries with Non-EGUs subject to Subpart U will be forced to purchase CAIR allowances at significant expense for the 2009 ozone season, or leave themselves exposed to legal action by the Illinois EPA, USEPA, or any citizen if they fail to purchase and hold such allowances. This hardship faced by the industry is the result of the conflicting actions taken by the D.C. Circuit in 2008 regarding the CAIR in the North Carolina v. EPA litigation, as well as the Illinois EPA's subsequent failure to act to establish the necessary rule for the 2009 ozone season and beyond. Such hardship could not have been avoided by Illinois industries subject to Subpart U.

35. Accordingly, there is a sound basis for adopting the emergency rule, described in Exhibit 1, because there is a threat to the public interest that warrants immediate action in order to alleviate the threat until a permanent rule can be adopted.

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36. As explained above and in the Motion for Expedited Action, the Illinois EPA has known since December 2008, that the CAIR obligations for meeting interstate NOx reductions would remain in effect for Illinois industries without any change to the original deadlines and timeframes associated with the CAIR. However, the Illinois EPA has failed to take action to develop a rule to comply with the federal NOx SIP Call requirements that can be adopted in time to allow distribution of allowances for the 2009 ozone season.

37. The applicable Board regulations clearly provide that the failure of facilities subject to Subpart U to hold allowances for each ton of NOx emitted is a violation of the Act and Board regulations. Thus, there is an urgent need for development of an emergency rule to establish a NOx Budget Trading Program for the 2009 ozone season.

38. To date, the Illinois EPA has done nothing to address the NOx SIP Call Budget Trading Program for Non-EGUs. The Illinois EPA's failure to act is a violation of Section 9.9 of the Act. Because of the Agency's failure to act, IERG is compelled to request that the Board adopt an emergency rule, as detailed in Exhibit 1, in order to address the hardship, including significant costs and potential liability, that will be faced by owners/operators of affected Non-EGUs should they not hold the requisite NOx allowances on November 30, 2009.

39. It is IERG's understanding that the rule must be final prior to the end of the ozone season (September 30, 2009) in order for USEPA to consider allocating the 2009 NOx allowances to the Illinois EPA, and thus, it is imperative that an emergency rule be adopted for the 2009 control period.

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40. The Illinois EPA's failure to replace Subpart U and establish a new regulatory mechanism for issuing NOx allowances for the 2009 ozone season to industries subject to Subpart U has placed the State's owners/operators of affected Non-EGUs in a critical bind and exposed them to liability. Since the USEPA ceased to operate the federal NOx SIP Call trading program after the 2008 ozone season, and since facilities subject to Subpart U are required by existing Subpart U to hold sufficient allowances to cover NOx emissions for the 2009 ozone season, it is imperative that an emergency rule be adopted in order to provide a mechanism by which the Illinois EPA may allocate NOx allowances for the 2009 control period.

WHEREFORE, for the above and foregoing reasons, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP hereby respectfully requests the Illinois Pollution Control Board to adopt the emergency rule, as detailed in Exhibit 1, to this Motion for Emergency Rule.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: August 3, 2009

By: /s/ Katherine D. Hodge
One of Its Attorneys

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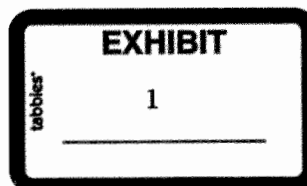
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Section 217.104 Incorporations by Reference

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 (2009~~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 I: 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).



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| (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(a)]~~

(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(c) 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.~~

- 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 (e)(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 (e)(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 recredation 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.~~

- B) All emissions monitoring information, in accordance with subsection (e) 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 of 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.
 - E) 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. Regs. 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 CAPP 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 UNO_{*} Trading Budget

- a) The initial NO_{*} allowances available for allocation for each control period (the Subpart UNO_{*} 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 UNO_{*} Trading Budget shall be initially allocated as set forth in Appendix E of this Part.

- b) The Agency may adjust the Subpart UNO_{*} 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.

- c) The Agency shall adjust the Subpart UNO_{*} 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 UNO_{*} Trading Budget of 4,882 allowances, the Agency will adjust the Subpart UNO_{*} Trading Budget pro-rata.
- e) If USEPA adjusts the Subpart UNO_{*} Trading Budget as to any individual budget unit, the Subpart UNO_{*} 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_{*} 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.

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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.
- c) 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.~~

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- 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 (c) 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 (c) 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(c), 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(e) 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.~~
- e) ~~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 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 account certificate of representation under 40 CFR 96.13.~~
- 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:~~

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- 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.~~

- 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:

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

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.

- 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 _____)

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

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 ALLOCATION LESS 3% NSSA FOR 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	231
	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

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

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

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

<u>BUNGE MILLING, INC.</u>	<u>183020ABT</u>	<u>CFB BOILER</u>		
<u>TOTAL ALLOCATION</u>			<u>101</u>	<u>98</u>

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

<u>CITGO PETROLEUM CORPORATION</u>	<u>197090AAI</u>	<u>BOILER 430B-1</u>		
<u>TOTAL ALLOCATION</u>			<u>39</u>	<u>38</u>

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

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

CORN PRODUCTS INTERNATIONAL INC

<u>CORN PRODUCTS INTERNATIONAL, INC.</u>	031012ABI	GAS FIRED BOILER #5	55	53
	031012ABI	BOILER # 1 COAL FIRED BOILER # 6	210	204
	031012ABI	BOILER # 2-7 COAL FIRED	210	203
	031012ABI	GAS FIRED BOILER NO 4 WEST STACK BLR# BOILER # 10	81	79
031012ABI		BOILER # 3 COAL FIRED	211	205
031012ABI		GAS FIRED BOILER NO 5- EAST STACK BOILER	81	79
<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

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

MARATHON OIL CO ILLINOIS REFINING DIV

MARATHON PETROLEUM COMPANY, LLC	033808AAB	BOILER #3 OIL,REF GAS FIRED	53	51
	033808AAB	BOILER #4 REF GAS,OIL FIRED	53	52
MARATHON OIL CO ILLINOIS REFINING DIV (Total Allocation)TOTAL ALLOCATION			106	103

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	063800AAC06 3800AAJ	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)TOTAL ALLOCATION			200	194

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

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

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

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

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, 2001)

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

Section 217.Appendix E Large Non-Electrical Generating Units

COMPANY NAME	SOURCE ID #	UNIT DESIGNATION	BUDGET ALLOCATION	BUDGET ALLOCATION 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			1,641	1,592		

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

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

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

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

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		
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 _____)

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

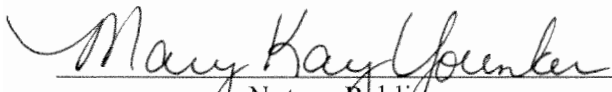
AFFIDAVIT OF DEIRDRE K. HIRNER

I, Deirdre K. Hirner, being first duly sworn on oath, affirm that I participated in the preparation and review of the Motion for Emergency Rule, 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

