



ILLINOIS CHAMBER  
OF COMMERCE

August 10, 2009

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**AUG 11 2009**

**STATE OF ILLINOIS**  
**Pollution Control Board**

Mr. Timothy Fox, Hearing Officer  
Illinois Pollution Control Board  
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P.C. # 5

RE: Rulemaking R2006-22, In the Matter of: NOx Trading Program:  
Amendments to 35 Ill. Adm. Code Part 217; Response to Motions  
by the Illinois Environmental Regulatory Group

Mr. Fox:

I am writing on behalf of The Illinois Chamber of Commerce in response to the Illinois Pollution Control Board's ("Board") August 6, 2009 Order requesting responses to the Illinois Environmental Regulatory Group's ("IERG") Motion for Emergency Rule and Motion for Expedited Action on IERG's Alternative Proposal (collectively "Motions"). We would like to offer our support for the Motions, and urge the Board to consider the following in ruling on the Motions:

1. We believe it is in the best interest of business in Illinois to adopt rules, such as the emergency rule and alternative proposal described in the Motions, that require NOx allowances to be distributed for the 2009 ozone season, as well as subsequent control periods.

2. Our membership includes companies that are owners or operators of budget units subject to the current Subpart U. 35 Ill. Admin. Code Part 217. Subpart U.

3. We understand that no sources subject to the current Subpart U have received allocations of NO<sub>x</sub> allowances for the 2009 ozone season, nor for any subsequent years.

4. We understand that the current version of Subpart U is a valid and enforceable regulation in Illinois that requires subject sources to hold NO<sub>x</sub> allowances for each ton of NO<sub>x</sub> emitted during the ozone season by November 30 of the applicable year.

5. We understand that the USEPA is no longer issuing allowances for the NO<sub>x</sub> Budget Trading Program, as would be required to satisfy the above described requirement.

6. We understand that NO<sub>x</sub> allowances could potentially be obtained through the purchase of Clean Air Interstate Rule ("CAIR") NO<sub>x</sub> allowances, although we are uncertain whether those allowances would be legally sufficient to satisfy the Subpart U requirement to hold NO<sub>x</sub> SIP Call allowances. Nor, even if sufficient, could our members demonstrate compliance with the requirement, due to their inability to obtain CAIR compliance accounts from the USEPA Clean Air Markets Division ("CAMD"), absent a federally approved trading program in Illinois.

7. We are concerned that our members, through no fault of their own, may be in violation of both the law and their Clean Air Act Permit Program ("CAAPP") permits, if immediate action is not taken to remedy the above described circumstances. The potential for violation of an applicable regulation and/or CAAPP permit condition could subject them to federal, state, or third-party enforcement actions, in addition to being

required to disclose the potential liability on Securities and Exchange Commission filings.

The Chamber appreciates the opportunity to provide this response. In light of the above, we request that the Board grant IERG's Motion for Emergency Rule in order to require that 2009 NOx allowances be distributed to impacted sources, and grant IERG's Motion for Expedited Action on IERG's Alternative Proposal in order to bring NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program for the 2010 control period and beyond.

Respectfully submitted,

By: Todd C. Maisch

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