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STATE OF ILLINOIS
Pollution Control Board

P.C. # 7

August 12, 2009

VIA FACSIMILE

Mr. Timothy Fox
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

RE: Response to IERG's Motions
In the Matter of: NOx Trading Program:
Amendments to 35 Ill. Adm. Code Part 217, R06-22

Dear Mr. Fox:

On August 6, 2009, the Illinois Pollution Control Board ("Board") issued an 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") filed with the Board on August 3, 2009 in the above-referenced matter. As an owner and operator of an emission unit subject to current regulations at 35 Ill. Admin. Code Part 217 Subpart U, Flint Hills Resources, LP ("Flint Hills") supports IERG's Motions and urges the Board to adopt an emergency rule for the 2009 control period and adopt the alternative proposal to bring budget units into the Clean Air Interstate Rule ("CAIR") NOx Ozone Season Trading Program.

Flint Hills owns and operates a boiler (CB-706) located at its Joliet Facility that is covered by the Subpart U NOx Budget Trading Program, but has never received an allocation of NOx allowances. Comments of IERG, *In the Matter of: NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217, R06-22* at 3 (Ill. Pol. Control Bd. Mar. 13, 2006) (rulemaking cited hereafter as "R06-22"). In fact, the Illinois Environmental Protection Agency ("Agency") acknowledged the inadvertent exclusion of Flint Hills from Subpart U in its Statement of Reasons by proposing to "add Flint Hills. . . and, to provide an allocation of 6 allowances."

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Statement of Reasons, R06-22 at 9. Because it has taken years to revise Subpart U Appendix E, Flint Hills requests an additional eight allowances to better reflect the facility's current operating scenario, which has changed since this rulemaking was initially proposed.

Currently, owners and operators of emission units subject to Subpart U, such as Flint Hills, have not received allocations of NOx allowances for the 2009 ozone season, nor for any subsequent years. It is our understanding, however, that the current version of Subpart U is a valid and enforceable regulation in Illinois that requires subject sources to hold NOx allowances for each ton of NOx emitted during the ozone season by November 30 of the applicable year, but the United States Environmental Protection Agency ("USEPA") is no longer issuing allowances for the NOx Budget Trading Program, as would be required to satisfy the requirement to hold NOx SIP Call allowances.

It is our understanding that NOx allowances could potentially be obtained through the purchase of CAIR NOx allowances. However, it is uncertain whether those CAIR allowances would be legally sufficient to satisfy the Subpart U requirement to hold NOx SIP Call allowances. Even if sufficient, sources will not be able to demonstrate compliance with the requirement, due to the inability to obtain CAIR compliance accounts from the USEPA Clean Air Markets Division ("CAMD"), absent a federally approved trading program in Illinois. We are concerned that, through no fault of our own, we may be placed in a position where it would be difficult or impossible to comply with Subpart U requirements and our Clean Air Act Permit Program permit, if immediate action is not taken to remedy the above described circumstances.

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. Accordingly, Flint Hills requests 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.

Sincerely,



Eric Kaysen
Vice President, EH&S
Flint Hills Resources, LP