

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE

TO:

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PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the attached RESPONSE TO MOTION FOR EMERGENCY RULE and MOTION FOR EXPEDITED ACTION ON THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S ALTERNATIVE PROPOSAL, and AFFIDAVIT OF ROBERT KALEEL, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 

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DATED: August 13, 2009
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RESPONSE TO MOTION FOR EMERGENCY RULE and MOTION FOR EXPEDITED ACTION ON THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S ALTERNATIVE PROPOSAL

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorneys, and pursuant to 35 Ill. Adm. Code 101.500 and 102.212(a) and (d), hereby files a Response to the Motion for Emergency Rule and Motion for Expedited Action on the Illinois Environmental Regulatory Group's Alternative Proposal, and, respectfully requests that the Illinois Pollution Control Board ("Board") deny these Motions. In support of its Response, the Illinois EPA states as follows:

I. INTRODUCTION

1. The Clean Air Interstate Rule ("CAIR") was promulgated by the United States Environmental Protection Agency ("USEPA") on May 12, 2005. 70 *Fed. Reg.* 25216. Note: there have also been additional amendments since 2005.

2. The CAIR provides that the NO_x State Implementation Plan ("SIP") Call Trading Program is sunsetted after the 2008 control period and that states have a continuing obligation to meet the NO_x Budget for Non-Electricity Generating Units ("EGUs"). The CAIR does not mandate how states must comply with this requirement. *Id.*

3. On January 19, 2006, the Illinois EPA filed the present rulemaking with the Board regarding the Nitrogen Oxide ("NO_x") Trading Program: Amendments to 35 Ill. Adm. Code 217 to address minor clean-up issues.

4. On December 23, 2008, the United States Court of Appeals for the District of Columbia, in an appeal challenging different aspects of the CAIR, remanded CAIR without vacatur. *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The appellate court left intact the states' obligation to meet the NOx SIP Call Budget.

5. In early 2009, in response to the *North Carolina* ruling, the Illinois EPA began the regulatory development process. During this time period the Illinois EPA had discussions with USEPA regarding its concerns with the short time-frames available for adoption of a NOx Budget rule for Non-EGUs. The short time-frames are of concern, as prior to the adoption of a rule the USEPA must approve both the State's rule and the allocation allowances to subject units.

6. On August 3, 2009, Illinois Environmental Regulatory Group ("IERG") filed a Motion for Emergency Rule and a Motion for Expedited Action on IERG's Alternative Proposal ("Motions," collectively).

7. In an order dated August 6, 2009, the Board directed participants to file responses to the Motions by no later than Thursday, August 13, 2009.

II. THE MOTIONS SHOULD BE DENIED FOR PROCEDURAL DEFICIENCIES

8. IERG's Motion for Emergency Rule is unfounded, in that an emergency situation does not exist. Further, even if the Board should find that an emergency situation exists, the proposed approach does not appropriately address the issue and is not federally approvable. In Attachment A, the Illinois EPA has provided regulatory language that should address any concerns appropriately.

9. IERG's Motion for Expedited Action on IERG's Alternative Proposal ("Motion for Expedited Action") is also unfounded in that an emergency situation does not exist and, as is the case with the Motion for Emergency Rule, even if Board finds that an emergency situation

exists and thus that there is reason to expedite action on IERG's proposal, that proposed alternative does not appropriately address the issue and is not federally approvable.

10. Another deficiency in the Motions is that, even if the Board finds some merit in IERG's arguments for the Alternative Proposal, the means by which IERG is presenting the Alternative Proposal is itself flawed. Specifically, the Alternative Proposal is more correctly a separate proposal from the subject matter and scope of the present rulemaking. Accordingly, the Motions should not be considered within the context of this rulemaking docket; rather, IERG should have submitted its proposal as a separate stand-alone rulemaking. The Board should not allow IERG to shoehorn its Motions into the current proceedings.

11. Furthermore, the Motion for Expedited Action contains no environmental, technical, or economic support for a regulatory proposal addressing the federal CAIR requirements for Non-EGUs. The Motion for Expedited Action also does not include the required petition of 200 signatures as required pursuant to Section 28 of the Environmental Protection Act ("Act") (415 ILCS 5/28) and 35 Ill. Adm. Code 102.202(g) and 102.410(b)). Another omission by IERG is an acknowledgment that an emergency rule, even if allowed, is only effective for up to 150 days as set forth in Section 5-45(c) of the Illinois Administrative Procedure Act (415 ILCS 5-45(c)). There is no provision for any regulatory amendment that would be in place following the expiration of 150 days.

12. Should the Board nonetheless desire to proceed with a short term solution, the Illinois EPA is hereby submitting proposed regulatory language which does not have the aforementioned problems associated with the Motion for Expedited Action but addresses IERG's concerns in an appropriate manner. (See Attachment A.)

13. Regardless of whether the Board treats the requests by IERG as a new rulemaking

or somehow part of the present rulemaking, the Motion for Emergency Rule fails to satisfy the content requirements for adoption of Board emergency regulatory proposals under 35 Ill. Adm. Code 102.612. Section 102.612 requires that the Board must find that a situation exists which reasonably constitutes a threat to the public interest, safety, or welfare in order to adopt an emergency rulemaking. In its Motion for Emergency Rule, IERG makes the wholly unfounded allegation that the Illinois EPA has violated Section 9.9 of the Act by virtue of failing to address the NOx SIP Call Trading Program for Non-EGUs. However, IERG fails to articulate, beyond speculation (which distinguishes this request from other more firmly grounded Board emergency rulemakings that were cited to by IERG), that there is in fact any such violation or that there is any real threat as described.

14. Similarly, regardless of the classification as new rulemaking or part of this rulemaking docket, the Motion for Expedited Action fails to satisfy the content requirements for Board regulatory proposals under 35 Ill. Adm. Code 102.202. Firstly, IERG's proposal is not accompanied by a statement of reasons that includes all the requirements of 35 Ill. Adm. Code 102.202(b). Second, the proposal is not accompanied by a petition signed by at least 200 persons, as required by Section 28 of the Act and 35 Ill. Adm. Code 102.202(g) and 102.410(b). Third, the proposal is not accompanied by any justification for the inapplicability or unavailability of inapplicable or unavailable information pursuant to 35 Ill. Adm. Code 102.202(k).

15. The Motion for Expedited Review is not properly included within the current rulemaking docket and thus must be seen and treated as an attempt to establish a new regulatory proposal. The Board should not allow this attempt by IERG to completely sidestep all requisite requirements for a new rulemaking proposal, which is what would result should IERG's motions

be granted in this instance. The scope of this rulemaking docket does not include the scope or subject matter of the Alternative Proposal being proffered by IERG. The language in IERG's Motion for Expedited Action is not amendatory to, or modifying, the rulemaking proposal initiated here by the Illinois EPA. The Alternative Proposal instead suggests language of a wholly different substance and thus cannot be considered in any way supported by the Illinois EPA's support for its own rulemaking proposal.

16. The regulatory proposal submitted by the Illinois EPA in support of R06-22 was to address minor clean-up issues not to establish a new federal program for this group of sources. It is true that the present proceedings were held in abeyance in recognition of the federal court's review of issues that concerned CAIR. However, if the Illinois EPA were to properly address CAIR for the group of sources identified by IERG in its Alternative Proposal, a new and separate regulatory proposal that complies with the Board's procedural rules for regulatory proposals would need to be filed. The failure of IERG to take such appropriate action should not be overlooked, and its attempt to roll its Alternative Proposal into the present rulemaking should not be rewarded.

17. A new rulemaking on the topic of the Alternative Proposal, which the Illinois EPA does not believe is necessary, should seek to amend Part 225. Such an approach would be consistently situated with other regulations concerning CAIR.

18. Hence, the Illinois EPA would request that the Motions be denied as not meeting the Board's procedural requirements for rulemakings.

19. There is no emergency with respect to Non-EGUs and NO_x SIP Call requirements. Section 27(c) of the Act provides:

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 5.02 of the Illinois Administrative Procedure Act.

Section 5-45 of the Illinois Administrative Procedure Act 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 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. The notice shall include the text of the emergency rule and shall be published in the Illinois Register. Consent orders or other court orders adopting settlements negotiated by an agency may be adopted under this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing under Section 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.

20. When USEPA adopted the CAIR, it made two amendments to the requirements for the NO_x SIP Call as it pertained to Non-EGUs. First, USEPA stated that it would no longer carry out any of the functions set forth for USEPA under the NO_x SIP Call. 40 CFR 51.121(r)(1). Second, USEPA required that states satisfy the same portion of the State's NO_x emission reduction requirements under the NO_x SIP Call for Non-EGUs. 40 CFR 51.121(r)(2). The CAIR amendments to the NO_x SIP Call did not, however, require that Non-EGUs be included in the CAIR NO_x Ozone Season Trading Program.

21. The Illinois EPA and the USEPA have had discussions concerning how the outstanding NO_x SIP Call budget requirement for the 2009 ozone control period can be met. The USEPA has indicated that a demonstration using reported emissions from the applicable sources demonstrating that the budget has been met would suffice in lieu of having adopted measures. The Illinois EPA will prepare and submit this documentation at the conclusion of the ozone season, once the appropriate emissions data is available.

22. The responsibility of determining how federal Clean Air Act ("CAA")

requirements will be met in the State of Illinois is the responsibility of the Illinois EPA. Section 4 of the Act designates the Illinois EPA as the agency responsible for administering the CAA obligations in Illinois. If USEPA finds that a state has failed to act on an obligation under the federal Clean Air Act, it sends a SIP Call or notification to the state identifying the deficiency and starting a sanctions clock or imposing a federal implementation plan ("FIP"). USEPA does not prosecute individual companies when a state has failed to adopt an applicable program.

23. The Illinois EPA has not received such a notification concerning the obligation to meet the requirements in Section 40 CFR 51.121(r)(2); to the contrary, the Illinois EPA has received from USEPA every indication that a demonstration using reported emissions from the applicable sources demonstrating that the budget has been met would suffice. Hence, on the federal level there is no emergency either to the State or to individual companies for failure to address this requirement through rulemaking.

24. IERG raises the specter that Section 9.9 of the Act requires that the obligations of 40 CFR 51.121(r)(2) be met through a trading program. The Illinois EPA does not agree with this interpretation and believes that the obligations were met when the Board adopted NOx SIP Call rules for engines, kilns, Non-EGUs, and EGUs as set forth in 35 Ill. Adm. Code 217, Subparts Q (in part), T, U and W. Furthermore, there is no indication that the General Assembly could have foreseen the sunset of the NOx SIP Call Trading Program and the adoption of the CAIR program, such that Section 9.9 of the Act could or should be read or interpreted (as IERG attempts to posit) to require a trading program. In the alternative, if Section 9.9 were to be interpreted as requiring that a trading program be adopted to address the budget obligation, the burden of proposing such a program lies with the Illinois EPA. Individual sources cannot be sued for lack of compliance with the NOx SIP Call Trading Program because there is no longer a

NOx SIP Call Trading Program. Thus, there is no emergency under Section 9.9 of the Act.

25. Furthermore, IERG has provided no evidence that any of its members have been subject to a lawsuit pursuant to the provisions of Section 9.9 of the Act or provided any legal support for the hypothetical proposition that a penalty of \$10,000 per day could be collected based on the existence of a program that is obsolete.

26. IERG also seeks to raise the possibility of enforcement pursuant to the Section 217.464 of the Board's regulations (35 Ill. Adm. Code 217.464) that requires sources to hold allowances equal to their emissions. As discussed above, USEPA is no longer administering the NOx SIP Call program; hence, no allowances were allotted by the Illinois EPA to sources for the 2009 control period pursuant to this program. Even if such allowances were allotted, USEPA has stated that the Administrator will no longer carry out any of the functions set forth under the NOx SIP Call. 40 CFR 51.121(r)(1). Under the NOx SIP Call, USEPA was charged with the responsibility of administering all aspects of the program, including populating accounts with allowances, checking the number of allowances against the number of tons emitted, and deducting the applicable number of allowances from the accounts. *See*, R01-17, Adopted Rule, Final Order, Opinion and Order of the Board, April 5, 2001. Hence, the requirement has been rendered moot.

27. IERG also states that the mere existence of the requirement in a regulation is a problem because of a Securities and Exchange Commission requirement to report any potential liabilities. Illinois EPA does not agree that 17 C.F.R. 229.303 requires the reporting of minimally impacting and arguably immaterial uncertainties be they deemed off-balance sheet or non-off-balance sheet arrangements (liabilities arising out of regulatory actions) that are as of yet merely speculative in nature and thus not settled, binding or even reasonably likely to result.

While the Illinois EPA does not agree with IERG's interpretation that the existence of an obsolete rule, where USEPA has clearly indicated that it is no longer carrying out any of the functions underlying the requirement, could result in a liability, IERG's solution would neither solve its hypothetical problem nor meet the CAIR approvability criteria or the interests of all parties affected by the proposal (general public, new businesses, environment).

28. As indicated by the facts, no emergency exists under the circumstances present. IERG may argue in terms of hypothetical possibilities and speculative fears, but such unfounded scenarios do not meet the statutory requirements of an emergency rulemaking, nor has IERG supported its conclusions of sanctions and liability with any facts.

29. There is no situation that constitutes a threat to the public interest, safety, or welfare. If the Board properly denies the Motions, there will be no resulting negative environmental effect.

30. As demonstrated by the facts that the NOx SIP Call Trading Program is obsolete and thus the affected sources are no longer subject to sanctions or potential liability, no situation exists that reasonably constitutes a threat to the affected sources, though a threat to a source is not provided for under the Act's (5 ILCS 5/27(c)) or the Illinois Administrative Procedure Act's (5 ILCS 100/5-45) discussion of emergency rulemakings. Arguably analogous to an administrative need, *Citizens for a Better Environment v. Illinois Pollution Control Board* (152 Ill.App.3d 105, 504 N.E.2d 166, 105 Ill.Dec. 297), the need to adopt emergency rules in order to alleviate a financial need, which by itself, does not threaten the public interest, safety or welfare, does not constitute an "emergency."

31. While the Board allowed that a financial hardship for a particular industry did constitute an emergency in the adoption of the Emergency Rule Amending 7.2 psi Reid Vapor

Pressure Requirement in the Metro-East Area, 35 Ill. Adm. Code 219.585(a), the Illinois EPA agrees with Board Member Meyer's dissenting opinion in that "there is a danger created when classifying a rulemaking as an emergency based on economic hardship. The purpose of emergency rule makings is not to offset economic hardship to business, but to protect public interest, welfare, and safety." Furthermore, financial hardship does not meet the statutory requirements of an emergency rulemaking as a financial hardship does not equate to a threat to public interest, safety or welfare. Be that as it may, IERG presents no dollar amount in support of a potential financial outlay and more importantly the facts demonstrate that there is no existing situation of financial hardship or threat of possible financial hardship as the program is obsolete and thusly the potential for sanctions or liability to the affected sources is obsolete as well.

32. The CAIR rule in pertinent part provides that States may include Non-EGUs in the CAIR program only if the program is substantially identically to 40 CFR Subparts AAAA through IIII. 40 CFR 51.123(aa)(1). The CAIR rule excludes the possibility that the State's allocation methodology may allocate allowances in excess of the budget provided. IERG's proposal does that by revising the allowances listed in Appendix E. See, IERG's Motion for Emergency Rule, Exhibit 11. USEPA has provided a NOx Non-EGU budget to Illinois of 4,856 allowances, while IERG's proposal has provided a NOx budget of 4,948 allowances. While IERG points to later events that might increase the budget, to date USEPA has not provided any statements or direction contrary to its past indications that it will not increase Illinois' NOx budget for Non EGUs.

33. Furthermore, due to the press of time, the Illinois EPA has not had an opportunity in the six days provided by the Board to submit this response to do a line by line analysis of the

proposed rule, or provide a copy of the draft rule to USEPA for review to ensure the approvability of the proposal. That said, the Illinois EPA notes that there are at least three areas that are not substantially identical to USEPA's model CAIR rule: inclusion of the low emitter exemption, permitting requirements and definitions.

34. Hence, if the Board were to adopt an emergency amendment beyond what the Illinois EPA has proposed in Attachment A, USEPA would not approve it. There can be no allocations by USEPA until it approves any amendments as a SIP revision. *See*, 72 Fed. Reg. 58528 (October 16, 2007).

35. In addition, if the rule being suggested by IERG was not federally approved, such new rule would create a state rule which would be inherently incompatible with the federal rule. Instead of having promulgated a rule that USEPA has formally declared obsolete, *see* 70 Fed. Reg. 25162, 25275 (May 12, 2005), there would be a state regulation requiring compliance with a federal program where compliance would be impossible, due to the fact that federal approval would not be forthcoming and thus the requirements would not be moot.

36. As the proposed rule does not meet the statutory requirements of an emergency rulemaking and is not approvable by USEPA, the Illinois EPA requests that IERG's Motion for Emergency Rulemaking be denied.

37. With respect to the Motion for Expedited Action, the Illinois EPA incorporates all earlier arguments concerning the lack of an emergency and the lack of support for an expedited rulemaking. The Illinois EPA requests that the motion be denied as there is no emergency situation that would justify shortchanging the public participation process on the major policy issues contained in IERG's proposal. There is no emergency with respect to liability nor is the proposed rule federally approvable.

38. The Motion for Expedited Action states that it represents a majority of the companies affected by Subpart U. However, IERG does not represent all of the affected companies, members of the general public or environmental groups. These stakeholders would be consulted if a CAIR type rulemaking had been proposed and developed by the Illinois EPA, as would be appropriate for a regulatory proposal of this scope and affect.

39. IERG proposes to continue the same outdated allocation methodology contained in Subpart U. The proposal allocates significantly more allowances than are needed by existing sources for compliance, allocates allowances to some sources that do not exist, and penalizes new sources (erects a barrier) by requiring them to buy allowances from existing sources. The requested budget and allocation methodology is far in excess of any speculative potential liability that is raised by IERG and does not comport with public policy and protection of the environment.

40. Both the CAIR and NOx SIP Call rules state allowance allocations do not establish a property right for the source receiving the allocations. *See*, 40 CFR §§96.6(c)(7) and 96.106(c)(6).

41. Hence, the Illinois EPA would request that the Motions be denied as not meeting the criteria for an emergency rulemaking.

III. IN THE ALTERNATIVE, IF THE BOARD FINDS AN EMERGENCY RULEMAKING IS APPROPRIATE, THE FOLLOWING LAUNGUAGE IS PROPOSED

42. In the alternative, if the Board finds that an emergency exists relative to the 2009 control season, the Illinois EPA has proposed language in Attachment A sunsetting the paper requirement to hold allowances in 35 Ill. Adm. Code 217.454(d). The Illinois EPA's proposal preserves the requirements to have appropriate permitting, recordkeeping and reporting conditions to support the compliance demonstration that is being developed.

43. Even if the Board finds that exigent circumstances exist, in order to proceed on a rulemaking adopting CAIR for Non-EGUs, the Board would first have to find in agreement with IERG that Section 9.9 of the Act mandates that the only way the NOx Budget requirement can be met is through inclusion in the CAIR trading program. As stated above, the Illinois EPA does not believe and finds no support that Section 9.9 of the Act mandates this result, leaving no discretion in how the requirement shall be met.

44. Such lack of statutory support notwithstanding, if the Board finds that there is a reason to grant IERG's Motions and amends the CAIR rule to include Non-EGUs, the Illinois EPA recommends that the Board open a separate docket and require that a regulatory proposal that comports with the requirements of Section 102.202 be submitted. The Board should also require that amendments to the CAIR program take place in 35 Ill. Adm. Code Part 225, which addresses other CAIR units.

45. The Illinois EPA does not support a full repeal of Subpart U. It believes that Subpart U units should be treated the same as Subpart W units with respect to prior requirements. The Board has an opened docket for Subpart W units at R09-20 in which obsolete requirements have been sunsetted but maintained in case prior non-compliance comes to light.

46. In addition, the Illinois EPA proposes that any rulemaking be limited to actual existing circumstances and for a limited time period, e.g., no budget greater than the actual emissions and for no longer than the 2011 control period. The Illinois EPA would highlight the fact that the CAIR rule is still in flux in light of the court's decisions in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008) vacating Phase II of the rule, and that there are several new National Ambient Air Quality Standards ("NAAQS") that have been promulgated which tighten existing air quality criteria for ozone, PM2.5 and NOx.

IV. CONCLUSION

The basis for IERG's Motions is potential legal/financial liability which the Illinois EPA does not believe exists and which has not been adequately justified or supported by IERG in its Motions. It is important for the Board to recognize that air quality will not be negatively affected if the Motions are properly denied and the Board does not proceed with an emergency rulemaking, since Illinois sources are easily meeting the NOx Budgets provided by the NOx SIP Call.

WHEREFORE, for the reasons stated above, the Illinois EPA respectfully requests that the Board deny both the Motion for Emergency Rule and the Motion for Expedited Action.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
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DATED: August 13, 2009

ATTACHMENT "A"

Pursuant to 35 Ill. Adm. Code 102.202(i), this proposed amendment is based on the most recent version of the rule as published on the Board's Web site or as obtained from the Clerk.

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

PART 217
NITROGEN OXIDES EMISSIONS
SUBPART A: GENERAL PROVISIONS

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

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section	
217.121	New Emission Sources

SUBPART C: EXISTING FUEL COMBUSTION EMISSION SOURCES

Section	
217.141	Existing Emission Sources in Major Metropolitan Areas

SUBPART K: PROCESS EMISSION SOURCES

Section	
217.301	Industrial Processes

SUBPART O: CHEMICAL MANUFACTURE

Section	
217.381	Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION
ENGINES AND TURBINES

Section	
217.386	Applicability

217.388	Control and Maintenance Requirements
217.390	Emissions Averaging Plans
217.392	Compliance
217.394	Testing and Monitoring
217.396	Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

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

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

Section	
217.450	Purpose
<u>217.451</u>	<u>Sunset Provisions</u>
217.452	Severability
217.454	Applicability
217.456	Compliance Requirements
217.458	Permitting Requirements
217.460	Subpart U NO _x Trading Budget
217.462	Methodology for Obtaining NO _x Allocations
217.464	Methodology for Determining NO _x Allowances from the New Source Set-Aside
217.466	NO _x Allocations Procedure for Subpart U Budget Units
217.468	New Source Set-Asides for "New" Budget Units
217.470	Early Reduction Credits (ERCs) for Budget Units
217.472	Low-Emitter Requirements
217.474	Opt-In Units
217.476	Opt-In Process
217.478	Opt-In Budget Units: Withdrawal from NO _x Trading Program
217.480	Opt-In Units: Change in Regulatory Status
217.482	Allowance Allocations to Opt-In Budget Units

SUBPART V: ELECTRIC POWER GENERATION

Section	
217.521	Lake of Egypt Power Plant
217.700	Purpose
217.702	Severability
217.704	Applicability
217.706	Emission Limitations

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217.708	NO _x Averaging
217.710	Monitoring
217.712	Reporting and Recordkeeping

SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL GENERATING UNITS

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

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Section	
217.800	Purpose
217.805	Emission Unit Eligibility
217.810	Participation Requirements
217.815	NO _x Emission Reductions and the Subpart X NO _x Trading Budget
217.820	Baseline Emissions Determination
217.825	Calculation of Creditable NO _x Emission Reductions
217.830	Limitations on NO _x Emission Reductions
217.835	NO _x Emission Reduction Proposal
217.840	Agency Action
217.845	Emissions Determination Methods
217.850	Emissions Monitoring
217.855	Reporting
217.860	Recordkeeping
217.865	Enforcement
APPENDIX A	Rule into Section Table
APPENDIX B	Section into Rule Table
APPENDIX C	Compliance Dates
APPENDIX D	Non-Electrical Generating Units

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APPENDIX E Large Non-Electrical Generating Units
APPENDIX F Allowances for Electrical Generating Units
APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NO_x SIP Call

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

Source: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-18 at 31 Ill. Reg. 14254, effective September 25, 2007; amended in R09-__ at __ Ill. Reg. ____, effective _____.

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

Section 217.451 Sunset Provisions

The provisions of this Subpart U, except for requirements of Sections 217.454 (Applicability), 217.456(b), (c), and (e) (Permitting, Monitoring, and Recordkeeping and Reporting), and Section 217.458 (Permitting), shall not apply for any control period in 2009 or thereafter. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

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

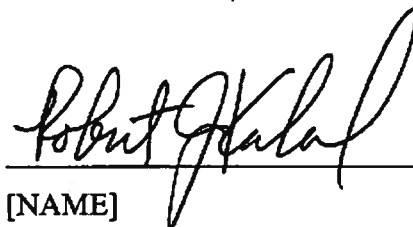
STATE OF ILLINOIS)
) SS
SANGAMON COUNTY)

AFFIDAVIT

I, Robert Kaleel, upon my oath, do hereby state as follows:

1. I am employed as the Manager of the Air Quality Planning Section for the Bureau of Air of the Illinois Environmental Protection Agency (Illinois EPA).
2. I have worked at the Illinois EPA for more than twenty-eight years, and have been in my present position since 2004. Prior to that, I was the Manager of the Air Quality Modeling Unit in the Air Quality Planning Section, a position that I held for more than fifteen years. I have also worked as a private consultant as a specialist in air quality modeling. As Manager of the Air Quality Planning Section, my responsibilities include oversight of staff that provides technical support for regulatory proposals needed to address air quality issues in Illinois. I have been closely involved with the development of Illinois' State Implementation Plans to address the PM_{2.5} and ozone nonattainment areas in Illinois.
3. To the best of my knowledge, the information contained herein is factually true and accurate.

FURTHER AFFIANT SAYETH NOT.



[NAME]

Subscribed and sworn to before me
this 13th day of August 2009.



Notary Public

