

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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	100 West Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC 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 **MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S AUGUST 20, 2009 ORDER**, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: September 14, 2009

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

Alec M. Davis
General Counsel
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP
215 East Adams Street
Springfield, Illinois 62701
(217) 522-5512

Katherine D. Hodge
N. LaDonna Driver
Monica T. Rios
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705
(217) 523-4900

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**MOTION FOR RECONSIDERATION
AND CLARIFICATION OF THE ILLINOIS
POLLUTION CONTROL BOARD'S AUGUST 20, 2009 ORDER**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, Alec M. Davis and HODGE DWYER & DRIVER, and pursuant to 35 Ill. Admin. Code § 101.520, hereby moves the Illinois Pollution Control Board (“Board”) to reconsider its August 20, 2009 Order and clarify certain points therein as described below. In support of this Motion, IERG states as follows:

This Motion is narrowly drawn to direct the Board’s attention to the Motion for Emergency Rule in that sufficient support has been provided to demonstrate that an emergency exists with regard to the 2009 control period and regulatory language has been presented for the Board’s consideration and adoption that will address the emergency. Further, in regards to the Motion for Expedited Action on IERG’s Alternative Proposal, IERG seeks minor clarification regarding conflicting statements concerning a separate docket for an alternative proposal.

I. BACKGROUND

A. Procedural History

On August 3, 2009, IERG filed a Motion for Emergency Rule and Motion for

Expedited Action on IERG's Alternative Proposal (collectively "Motions")¹ requesting the Board adopt an emergency rule to establish a mechanism by which the Illinois Environmental Protection Agency ("Illinois EPA") could issue NOx allowances to budget units subject to 35 Ill. Admin. Code Part 217 Subpart U and adopt a permanent rule to bring budget units into the Clean Air Interstate Rule ("CAIR") NOx Ozone Season Trading Program. IERG Motions, *In the Matter of NOx Trading Program: Amendments to 35 Ill. Adm. Code Part 217*, R06-22 (Ill.Pol.Control.Bd. Aug. 3, 2009) (rulemaking hereafter cited as "R06-22"). The Illinois EPA filed a Response to IERG Motions on August 13, 2009, and IERG filed a Reply to the Illinois EPA's Response on August 17, 2009. Response to IERG's Motions, R06-22 (Ill.Pol.Control.Bd. Aug. 13, 2009) (hereafter "Response"); Reply to the Illinois EPA's Response to IERG Motions, R06-22 (Ill.Pol.Control.Bd. Aug. 17, 2009) (hereafter "Reply"). On August 20, 2009, the Board issued an Order denying IERG's Motions stating that the issues raised by IERG do "not support a finding that an emergency exists" and that the alternative proposal requires "a new and separate rulemaking proceeding." Board Order, R06-22 (Ill.Pol.Control.Bd. Aug. 20, 2009) (hereafter "Order").

In accordance with the Board's rules, IERG requests that the Board reconsider the portion of its Order denying the adoption of an emergency rule and provide clarification regarding a separate docket for an alternative proposal.

B. Standard for Motions for Reconsideration

The Board has observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was

¹ Motion for Emergency Rule hereafter cited as "IERG MER." Motion for Expedited Action hereafter cited as "IERG MEA."

not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." *Citizens Against Regional Landfill v. County Board of Whiteside*, PCB No. 92-156 (Ill.Pol.Control.Bd. Mar. 11, 1993) (quoting *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627 (1st Dist. 1992)); *see also* Board Order, *In the Matter of: Petition of Maximum Investments, LLC for an Adjusted Standard from 35 Ill. Adm. Code 740.210(a)(3) for Stoney Creek Landfill in Palos Hills, Illinois*, AS No. 09-2 (Ill.Pol.Control.Bd. Feb. 5, 2009); 35 Ill. Admin. Code § 101.902. As discussed in detail below, the Board has erred in the application of existing law by denying IERG's request for the adoption of an emergency rule as described in the Motion for Emergency Rule.

II. BOARD OBLIGATION TO ADOPT

As referenced above, on August 20, 2009, the Board issued an Order denying IERG's Motions. The Board stated in regards to the requirements of Section 9.9 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9.9:

Finally, IERG has generally argued that the Agency's failure to propose a NOx trading program for non-EGUs is inconsistent with the requirements of Section 9.9 of the Act. IERG and the Agency have expressed strenuous disagreement about the Agency's obligations under Section 9.9. Nonetheless, the Board need not decide that issue in resolving IERG's motions. Section 9.9(b) of the Act provides in pertinent part that "[t]he Agency shall propose and the Board shall adopt regulations to implement an interstate NOx trading program. . ." IERG has not persuasively argued that Section 9.9 authorizes IERG to propose trading program regulations, although IERG states that it has "waited patiently" for such an Agency proposal and was "compelled" to offer one after the Agency failed to do so. The Board concludes that the requirements of Section 9.9 do not support a finding that an emergency exists.

Order at 33. (Emphasis in Board Order.) (Citations omitted.) The Board, as noted above, states that it does not need to decide the issue; however, IERG maintains

that the Board has misconstrued Section 9.9.

Section 9.9(b) of the Act states that the “Agency shall propose and the Board shall adopt regulations . . .” 415 ILCS 5/9.9(b). (Emphasis added.) Section 9.9(b) provides the Board with an independent and mandatory obligation to adopt a regulation. The Board, in adopting the original Subpart U regulations, stated:

The NO_x SIP Call requires that Illinois submit a SIP revision to control the emission of the NO_x during the ozone control period. Sections 9.9(b), (c), and (d) of the Act require the Board to adopt the NO_x emissions trading program to comply with this federal mandate. The Board believes that these rules represent an equitable and economic method of satisfying these obligations. Therefore, these rules are adopted as final, adding Subparts U and X to 35 Ill. Adm. Code 217, and conforming amendments to 35 Ill. Adm. Code 211.

Board Order, *In the Matter of: Proposed New 35 Ill. Adm. Code 217, Subpart U, NO_x Control and Trading Program for Specified NO_x Generating Units, Subpart X, Voluntary NO_x Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211*, R01-17 (Ill.Pol.Control.Bd. April 5, 2001). (Emphasis added.)

The failure of the Illinois EPA to offer a proposal to bring non-EGUs into the CAIR NO_x Ozone Season Trading Program does not relieve the Board of its obligation under Section 9.9 of the Act to adopt regulations for a NO_x emissions trading program to comply with the continuing federal NO_x SIP Call requirements. Although USEPA has directed states to either adopt the federal CAIR rule to bring non-EGUs into the CAIR NO_x Ozone Season Trading Program or submit a SIP revision replacing NO_x SIP Call Budget Trading Program requirements with new requirements that meet the same level of reduction, the Illinois EPA has failed to take such action. IERG MEA at 10-11 (citing 70 Fed. Reg. 25162, 25290 (May 12, 2005)). However, the mandate from the Illinois General Assembly has not changed. Section 9.9 of the Act requires a “NO_x trading

program,” and the Board has an independent and mandatory obligation to adopt such a rule.

Prior to the 2009 control period, sources subject to Subpart U participated in a NOx trading program by holding NOx allowances. Subpart U continues to require those sources to hold allowances on November 30, 2009. The Board has an obligation to adopt a rule to enable sources subject to Subpart U to comply with Subpart U. As set forth below, the Board must adopt an emergency rule, which is necessary because of the risk of liability facing sources subject to Subpart U absent the adoption of such rule.

III. RISK OF LIABILITY SUPPORTS THAT AN EMERGENCY EXISTS WARRANTING ADOPTION OF AN EMERGENCY RULE

The Board stated in its Order in regards to the risk of liability facing sources subject to Subpart U:

IERG claims that the Agency’s failure to propose regulations bringing non-EGU NOx SIP Call budget units into the CAIR NOx Ozone Season Trading Program subjects those sources to liability for violation of Subpart U, and in some cases, their CAAPP permits.

On this issue of the risk to liability, the Board notes that Section 217.456(d) of Subpart U requires NOx SIP Call budget units to hold NOx SIP Call allowances by November 30, 2009, for the preceding ozone control period. . . . [T]he Agency has explicitly concluded that the requirement to hold allowances “has been rendered moot.” Characterizing the program as “obsolete,” the Agency has clearly stated that “affected sources are no longer subject to sanctions or liability.” On the basis of these representations by the Agency, which are supported by affidavit, the Board finds that the risk of liability to IERG’s members and other affected sources for violating the regulation or a permit condition based upon it does not support a finding that an emergency exists.

Order at 31-32. (Emphasis added.) As stated above, the Board concluded that the risk of liability to impacted sources “for violating the regulation or a permit condition based

upon it does not support a finding that an emergency exists.” *Id.* IERG maintains that the Board erred in finding that an emergency does not exist.

As discussed in more detail below, the risk of liability facing sources subject to Subpart U is similar to the risk of liability facing facilities as described in a previous Board proceeding where the Board adopted an emergency rule.

A. Board Precedent for Adoption of Emergency Rule

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 Illinois EPA requested the adoption of an emergency rule in order to establish a new compliance date for compliance with the Stage II vapor recovery rules, which required facilities that commenced construction after November 1, 1990, “to install and begin operating Stage II equipment by May 1, 1993.” Board Order, *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 *4 (Ill.Pol.Control.Bd. May 20, 1993).² According to the Illinois EPA, the compliance date for installation and operation of the Stage II equipment should be delayed because of USEPA’s failure to issue “definitive guidance” on the issue. *Id.* at *5.

The Board in determining that an emergency existed warranting the adoption of an emergency rule stated:

[T]he 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.

² For additional discussion regarding financial hardship in the R93-12 proceeding, see IERG MER at 13-15 and Reply at 12-18.

The Board will accordingly proceed to adopt the emergency rule as requested by the Agency.

Id. at *8. (Emphasis added.) Thus, IERG maintains in this proceeding, as in the R93-12 proceeding, an emergency exists warranting the adoption of a rule.

B. Risk of Liability: Potential Legal Action by Agencies and/or Citizens

The Board concludes in its Order that the “risk of liability . . . does not support a finding that an emergency exists.” Order at 33. The Board, however, did not conclude that there was no risk of liability at all, just that, in its opinion, based on the Illinois EPA’s representations, the risk of liability did not support an emergency. *Id.* Contrary to the Illinois EPA’s representations, as explained in detail in IERG’s Motions, sources subject to Subpart U face potential liability for noncompliance with the Subpart U requirement to hold NOx allowances on November 30, 2009, as well as potential liability for similar requirements in sources’ CAAPP permits. *See* IERG MER at 3, 15; IERG MEA at 14-15. Currently, the requirement to hold NOx allowances pursuant to Subpart U remains in full force and effect. In addition, the requirements set forth in CAAPP permit conditions remain applicable. Further, the Act specifically states that a “any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof . . . shall be liable for a civil penalty . . .” 415 ILCS 5/44. (Emphasis added.) The Act also provides:

It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP sources except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements. All terms and conditions of a permit issued under this Section are enforceable by USEPA and citizens under the Clean Air Act . . .

415 ILCS 5/39.5(6)(a). (Emphasis added.)

Just as in the R93-12 rulemaking, where the requirement to install and operate Stage II recovery equipment was applicable for impacted facilities as required by the Section 219.526(d) of the Board's regulations, the Board's requirement to hold NOx allowances is applicable. The Board recognized that the facilities in R93-12 were in a position where they were "subject to legal action by the Agency, or any citizen, if they fail[ed] to comply" with the applicable compliance deadline. R93-12 at *8. The same situation exists in these circumstances.

Here, sources subject to Subpart U face compliance with a Subpart U requirement, as well as CAAPP permit conditions, that require them to hold NOx allowances by November 30, 2009. As it is IERG's understanding that neither the Illinois EPA nor USEPA intends to issue NOx allowances for the 2009 control period by November 30, 2009, it will be impossible for sources subject to Subpart U to hold such allowances by November 30, 2009. Thus, impacted sources are in a position where they are subject to legal action for failing to comply with the regulatory and permit requirements to hold NOx allowances by the Illinois EPA, USEPA, the Illinois Attorney General's Office, or any citizen. In addition, although the Illinois EPA claimed in its Response that the requirement to hold allowances has been rendered "moot," the Illinois EPA completely failed to address the liability of Subpart U sources stemming from the CAAPP permit conditions requiring sources hold NOx allowances.

The circumstances in the R93-12 proceeding and in this matter are nearly identical, *i.e.* the impacted facilities in both situations face liability by state or federal agencies or citizen groups for failure to comply with applicable regulations. The situation in this matter clearly warrants the same determination that such risk of liability

establishes that an emergency exists and justifies the adoption of an emergency rule.

C. **Board's Direction to the Illinois EPA to File a Status Report by October 19, 2009**

IERG appreciates that the Board did not discount the interests it raised in its Motions and Reply, and directed the Illinois EPA to file a status report indicating whether it intends to file a separate rulemaking proposal. Order at 33. As described in IERG's Motions, the Illinois EPA has been required to file status reports in the past, and in doing so, has indicated an intent to file a rule. A status report affords no protection from liability, and based on evidence of past practice, there is no assurance that the Illinois EPA will file a proposal that will alleviate the liability facing sources subject to Subpart U. Further, given the Board's procedural rules, a rulemaking proposal filed by the Illinois EPA on October 19, 2009, could not be final prior to November 30, 2009, even in the best of circumstances.

As raised in IERG's Motions and Reply and acknowledged by the Board in its Order, "the Agency plainly indicated that, in the spring of 2009, it expected to replace Subpart U by proposing a rule that would integrate non-EGUs into the CAIR rule." *Id.* The Illinois EPA gave every indication that it intended to propose a rule to integrate non-EGUs into CAIR, but never took action to do so.

Based on the discussion above, it becomes apparent that sources subject to Subpart U would be very hesitant to rely on the Illinois EPA to expeditiously file a rulemaking proposal. Until the Board adopts a rule, impacted sources will remain uncertain as to their liability for failing to hold NO_x allowances for the 2009 control period.

D. Subpart U Applicability

The Illinois EPA states that the requirement to hold NOx allowances “has been rendered moot.” Response at ¶ 26. The Illinois EPA reasons it did not allocate allowances to sources for the 2009 control period because “USEPA is no longer administering the NOx SIP Call program.” *Id.* The Illinois EPA goes on to state that even if such allowances were allotted, USEPA no longer carries out any of the functions set forth under the NOx SIP Call. *Id.* (citing 40 C.F.R. § 51.121(r)(1)). The Illinois EPA then describes USEPA’s charge to populate accounts with allowances, check allowances against tons emitted, and deduct the applicable number from the accounts, again seemingly to provide justification that the requirement to hold NOx allowances as moot. *Id.*

However, neither specifically raised by the Illinois EPA nor determined by the Board is whether Subpart U in its entirety, and not just the requirement to hold NOx allowances, has been rendered inapplicable, as the NOx SIP Call program is “moot” and “obsolete.” Response at ¶ 26. If the Illinois EPA’s reasoning related to the requirement to hold allowances is determined to be legally correct, then it would appear that all Subpart U requirements would also be rendered moot and obsolete. In accordance with 40 C.F.R. § 51.121(r)(1), USEPA will not carry out any of the functions set forth in 40 C.F.R. Part 96 Subparts A-I, which includes not only allowance provisions, but also requirements for monitoring, reporting, and compliance certification. The current version of Subpart U references these provisions repeatedly in Section 217.456 Compliance Requirements, including subsection (c) *Monitoring requirements* (referring to 40 CFR 96, Subpart H), subsection (d) *Allowance requirements* (referring to 40 CFR 96, Subparts F

and G), subsection (e) *Recordkeeping and reporting requirements* (referring to 40 CFR 96.13, and Subparts D and H). 35 Ill. Admin. Code § 217.456. Thus, sources subject to Subpart U remain uncertain regarding what provisions, if any, of Subpart U do or do not apply. However, it is certain that the NOx SIP Call requirements remain applicable.

IERG MEA at 9-13.

In the event that the Board determines that, as a matter of law, there is no risk of liability to affected sources related to Subpart U requirements and/or related CAAPP permit conditions, IERG requests that the Board so state in ruling on this Motion. If the Board does not make such a determination and further does not adopt an emergency rule, affected sources may be compelled to file variance petitions with the Board in order to secure relief from compliance with the requirements of Subpart U.³

E. Conclusion

The Board erred in the application of its past precedent in determining that the risk of liability does not support a finding that an emergency exists, and denying IERG's Motion for Emergency Rulemaking. The risk of liability facing sources subject to Subpart U provides a sufficient basis for the adoption of an emergency rule. The Board's own decision in the R93-12 proceeding supports the adoption of an emergency rule, and as such, IERG respectfully requests that the Board reconsider its denial of the adoption of an emergency rule.

IV. PROPOSED EMERGENCY RULE LANGUAGE

As discussed above, owners and operators of sources subject to Subpart U risk

³ If no emergency rule is adopted and impacted sources file petitions for variances from the requirement to hold NOx allowances, sources, should the variances be granted by the Board, could subsequently utilize the Act's minor modification procedures to clarify the applicable provisions in CAAPP permit conditions for 2009 because the requirements for a minor modification, as described in Section 39.5(14)(a) of the Act, would be satisfied. 415 ILCS 5/39.5(14).

liability for potential noncompliance with Subpart U and CAAPP permit conditions should they not hold NOx allowances on November 30, 2009. Further, as noted above, if the Illinois EPA's reasoning regarding the requirement to hold allowances is determined to be legally correct, it seems that all Subpart U requirements would be rendered moot and obsolete, and although IERG maintains that Section 9.9 of the Act requires a NOx trading system, a temporary solution for the 2009 control period is necessary in order to address the scope of potential liability facing sources.

The Illinois EPA, in Attachment A to its Response, proposed a provision that provided that only certain applicability, permitting, monitoring, recordkeeping, and reporting requirements continue to apply to sources subject to Subpart U. While the proposed language may offer some relief from potential liability, as noted in its Reply, IERG has concerns whether the Illinois EPA's proposed language is adequate to protect sources from liability stemming from CAAPP permit conditions requiring facilities to hold NOx allowances. However, since the adoption of the emergency rule language proposed by IERG in its Motion for Emergency Rule would require coordination with USEPA and the Illinois EPA that may, at this time, no longer be possible prior to November 30, 2009, the Illinois EPA provision, with some minor modification, affords a viable option to alleviate the risk of liability to Subpart U for the 2009 control period.⁴

Thus, IERG offers the following revisions to the provision proposed by the Illinois EPA in its Response as an emergency rule to be adopted by the Board:

⁴ As an alternative to this Motion, if the Board should determine that IERG's revisions to the Illinois EPA's proposed language should be considered in a separate docket, IERG respectfully requests that the Board open a new docket. Since IERG has provided sufficient information in its Motions, Reply, and this filing in support of its proposal, IERG requests that the Board incorporate the information provided in such documents into the new docket for consideration in support of IERG's proposal and waive any additional procedural requirements. IERG will also provide any additional information the Board requests.

Section 217.451 ~~Sunset~~ Special Provisions for 2009 Control Period

Except for the requirements of Sections 217.454 (Applicability), 217.456(b), (c), and (e) (Permitting, Monitoring, and Recordkeeping and Reporting), and Section 217.458 (Permitting), the provisions of this Subpart U shall not apply for any the 2009 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.

BOARD NOTE: Provisions of this Subpart that do not apply for the 2009 control period may be addressed in CAAPP permits by minor modification procedures at 415 ILCS 5/39.5(14)(a).

The addition of a Board Note is necessary since revisions to regulatory requirements do not automatically trigger revisions to the permit conditions that stem from the revised regulation. A permit modification is necessary in order to achieve consistency between the revised regulatory requirement and applicable permit conditions, as well as limit the liability of the permittee for potential noncompliance with permit conditions.

Once the above-referenced section is adopted by the Board, Subpart U requirements not preserved by Section 217.451 will not be applicable requirements in 2009 for purposes of CAAPP permits. Sources can then utilize the Act's minor modification procedures to clarify the applicable provisions in CAAPP permit conditions for 2009 because the requirements for a minor modification, as described in Section 39.5(14)(a) of the Act, will be satisfied. 415 ILCS 5/39.5(14).

As discussed above, the risk of liability to sources subject to Subpart U amounts to a threat to the public interest and an emergency warranting the adoption of an emergency rule. IERG respectfully requests that the Board adopt the emergency rule as described above.

V. REQUEST FOR CLARIFICATION

The Board's Order states that "IERG has generally argued that the Agency's failure to propose a NOx trading program for non-EGUs is inconsistent with the requirements of Section 9.9 of the Act." Order at 33. The Board recognized the disagreement between IERG and the Illinois EPA on this issue and concluded that it need not decide the issue. *Id.* In so concluding, the Board further stated:

Section 9.9(b) of the Act provides in pertinent part that "[t]he Agency shall propose and the Board shall adopt regulations to implement an interstate NOx trading program. . . ." IERG has not persuasively argued that Section 9.9 authorizes IERG to propose trading program regulations . . .

Id. (citing 415 ILCS 5/9.9(b)). (Emphasis in Board Order.) However, the Board also stated that "if IERG wishes to file a rulemaking proposal, the Board will consider it in a separate docket." Order at 1. In addition, in regards to IERG's alternative proposal,⁵ the Board stated "IERG's proposed language would require a new and separate rulemaking proposal complying with all applicable procedural requirements, which the Board would consider in a separate docket." *Id.* at 34.

Based on the Board's statements above, IERG respectfully requests clarification on whether the Board will accept a rulemaking proposed pursuant to Section 9.9 of the Act from parties other than the Illinois EPA.

VI. CONCLUSION

Sources subject to Subpart U face liability for noncompliance with existing Subpart U requirements and CAAPP permit conditions should they not hold the requisite NOx allowances on November 30, 2009. Since, as IERG understands, neither the Illinois

⁵ IERG clarifies that its alternative proposal is not for the 2009 control period, but rather applies for the 2010 control period and beyond.

EPA nor USEPA intends to issue 2009 NO_x allowances, the risk of liability faced by sources subject to Subpart U constitutes a threat to the public interest and an emergency warranting the adoption of an emergency rule.

Based on the failure of the Board to consider past precedent, in conjunction with the above described liability faced by Subpart U sources, IERG maintains that the Board's Order constituted an error in the application of existing law. As such, IERG respectfully requests that the Board reconsider its Order, and find that an emergency exists with regard to the 2009 control period, and look favorably on the regulatory language that has been presented in this Motion as an emergency rule to alleviate the threat of liability for the 2009 control period. As noted previously, should the Board determine that the proposed rule be considered in a separate docket, IERG requests that the Board open a new docket and incorporate IERG's recent filings in this rulemaking into the new docket for consideration. IERG further seeks the Board's concurrence that it can act independently, absent an Illinois EPA proposal, to adopt a rule to address the emergency situation. Finally, IERG appreciates any clarification that the Board can provide with regard to the acceptability of proposals for the future continuation of a NO_x trading program.

WHEREFORE, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP requests that the Board grant this Motion for Reconsideration and Clarification of the Board's August 20, 2009 Order.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: September 14, 2009

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

Alec M. Davis
General Counsel
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP
215 East Adams Street
Springfield, Illinois 62701
(217) 522-5512

Katherine D. Hodge
N. LaDonna Driver
Monica T. Rios
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705
(217) 523-4900

IERG:001/RDocket/Fil/R06-22/Mtn for Reconsideration IPCB 8.20.09 Order (9.14.09)

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S AUGUST 20, 2009 ORDER upon:

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

Timothy J. Fox, Esq.
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

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

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

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

Matthew J. Dunn, Esq.
Chief, Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

via electronic mail on September 14, 2009.

/s/Katherine D. Hodge

Katherine D. Hodge