

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

MOTION TO FILE INSTANTER AND FOR EXTENSION OF TIME TO FILE RESPONSE
TO MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE ILLINOIS
POLLUTION CONTROL BOARD'S AUGUST 20, 2009 ORDER

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorneys, and pursuant to 35 Ill. Adm. Code 101.522, hereby files a Motion to File Instanter and for Extension of Time to File Response to Motion for Reconsideration and Clarification of the Illinois Pollution Control Board's August 20, 2009 Order, and, respectfully requests that the Illinois Pollution Control Board ("Board") grants this motion for filing instanter and extension. In support of its Motion, the Illinois EPA states as follows:

1. On August 3, 2009, Illinois Environmental Regulatory Group ("IERG") filed a MOTION FOR EMERGENCY RULE and MOTION FOR EXPEDITED ACTION ON THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S ALTERNATIVE PROPOSAL.
2. On August 6, 2009, the Board directed participants to file responses to the motions no later than Thursday, August 13, 2009. The Illinois EPA filed a response on August 13, 2009, and IERG filed a reply on August 17, 2009.
3. On August 20, 2009, the Board denied IERG's Motions for Emergency Rulemaking.
4. On September 14, 2009, IERG filed a Motion for Reconsideration and Clarification arguing that the Board had misapplied the law when IERG's Motions for Emergency Rulemaking were denied.
5. Responses to motions are due within 14 days after service of the document. The

Electronic Filing - Received, Clerk's Office, October 14, 2009

Illinois EPA was electronically served on September 14, 2009; therefore, its response to the above Motion for Reconsideration and Clarification was due September 28, 2009.

6. On September 28, 2009, the Illinois EPA filed Motion to File Instanter and Motion for Extension to File a Response indicating that the Illinois EPA and IERG were in discussions concerning the issues raised in IERG's Motion for Reconsideration and Clarification, and as a result the Illinois EPA sought an extension of time to October 12, 2009, for the response to the Motion for Reconsideration and Clarification.

7. On October 1, 2009, the Hearing Officer granted an extension until October 13, 2009.

8. On September 24, 2009, the Illinois EPA received a letter from USEPA confirming that Non-EGUs were not required to hold allowances for the 2009 control period. A copy of that letter is attached.

9. The Illinois EPA and IERG are still in discussions concerning the issues raised in IERG's Motion for Reconsideration and Clarification, as well as the implications of the Letter from USEPA, and as a result the Illinois EPA seeks an extension of time until October 26, 2009, for the response to the Motion for Reconsideration and Clarification.

10. This Motion for Extension would have been filed on October 13, 2009, but the parties were not able to confer until October 14, 2009, on the contents of this Motion requesting the extension.

WHEREFORE, for the reasons stated above, the Illinois EPA respectfully requests that the Board or Hearing Officer grant this Motion for filing Instanter and Extension, and allow the Illinois EPA up to and including October 26, 2009, to file a response to IERG's Motion for Reconsideration and Clarification.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ _____

Rachel Doctors, Assistant Counsel
Air Regulatory Unit
Division of Legal Counsel

DATED: October 14, 2009

1021 North Grand Avenue, East
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217.782.9807 (Fax)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)
)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached MOTION TO FILE INSTANTER AND FOR EXTENSION OF TIME TO FILE RESPONSE TO MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S AUGUST 20, 2009 ORDER of the Illinois Environmental Protection Agency upon the following persons:

John Therriault, Assistant Clerk
Timothy Fox, Hearing Officer
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Katherine Hodge
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ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

_____/s/_____

Rachel Doctors, Assistant Counsel
Air Regulatory Unit
Division of Legal Counsel

Dated: October 14, 2009

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 24 2009

REPLY TO THE ATTENTION OF:

AR-18J

Laurel Kroack
Chief
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Dear Ms. Kroack:

I am writing to respond to your verbal inquiries regarding U.S. Environmental Protection Agency policy for non-electric generating unit sources (non-EGUs) pursuant to the nitrogen oxides (NO_x) State Implementation Plan (SIP) Call and the Clean Air Interstate Rule (CAIR). You asked about the flexibility EPA offers states in achieving NO_x emission budgets under these regulations, in particular whether we offer Illinois the option to achieve these budgets through direct regulation of these emissions rather than through participation in a trading program. You also asked what related requirements are currently in effect for non-EGUs.

EPA regulations under the NO_x SIP Call and CAIR expressly provide states the flexibility to achieve emission budgets by means other than participation in a trading program. In the preamble to the NO_x SIP Call, EPA stated that “[i]n providing a cap-and-trade program as a streamlined means by which to comply with the NO_x SIP call, EPA does not preclude implementation of other solutions.” (63 FR 57457, October 27, 1998.) Further, “States . . . have the flexibility to respond as they see fit to meet their emissions budgets established under the NO_x SIP call. States are free to pursue other regulatory mechanisms or include other types of trading programs.” (63 FR 57458, October 27, 1998.)

EPA provided similar flexibility for the CAIR NO_x Ozone Season Trading Program. EPA’s proposal of CAIR did not provide for including non-EGUs in the NO_x ozone season trading program. After considering public comments, EPA offered the option for states to require participation of non-EGUs in the trading program. However, EPA also offered states the option to exclude these sources from the trading program: “States have the flexibility to include, as full trading partners, all trading sources affected by the NO_x SIP Call in the ozone-season CAIR NO_x cap and trade program.” (70 FR 25275, May 12, 2005.) EPA made a similar statement in its approval of Illinois’ submittal addressing CAIR: “States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the State’s NO_x SIP Call trading program that are not EGUs as defined under CAIR. However, Illinois has chosen not to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all

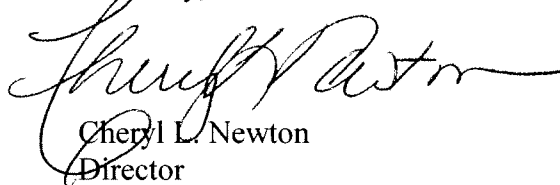
non-EGUs in the State's NOx SIP Call trading program." (72 FR 58532, October 16, 2007.)

The emission budget requirements of the NOx SIP Call regulations remain in effect. If Illinois chooses to include only EGUs in the CAIR NOx Ozone Season Trading Program, Illinois will need to demonstrate that sufficient restrictions on non-EGU emissions are in place to assure the continued satisfaction of the emission budget requirements under the NOx SIP Call. We understand that historic emissions for non-EGUs are well below the emission budget and that significant emission restrictions are in place for non-EGUs as a result of a combination of consent decrees (presumably to be replaced with equivalent permit restrictions), permit restrictions, and your recently adopted NOx reasonably available control technology regulations. We look forward to working with you as you evaluate the adequacy of those restrictions in meeting emission budget requirements of the NOx SIP Call, now and in the future.

EPA has approved Illinois' submittals addressing the NOx SIP Call, based on your rules in Part 217. (See 66 FR 56449 and 66 FR 56454, November 8, 2001.) As noted above, EPA has also approved Illinois' CAIR submittal. The NOx SIP Call requirement that non-EGUs comply with emissions monitoring, recordkeeping, and reporting requirements for NOx mass emissions under 40 CFR Part 75 remain in effect. However, EPA is no longer operating the trading program under the NOx SIP Call; EPA is instead operating the CAIR NOx Ozone Season Trading Program, which replaced the NOx SIP Call program. Since non-EGUs in Illinois are not currently part of the CAIR NOx Ozone Season Trading Program, EPA will neither issue allowances to these sources nor deduct allowances according to reported emissions, and these sources currently have no compliance obligation to hold allowances in an amount equivalent to ozone season emissions.

Thank you for your efforts on these issues. I look forward to working with you on your evaluation of alternative means of meeting applicable requirements. If you have further questions, please contact me or your staff may contact John Summerhays at 312-886-6067.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cheryl L. Newton
Director

Air and Radiation Division