

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 TO WITHDRAW A PORTION OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S PENDING 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: October 15, 2009

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

Alec M. Davis
General Counsel
ILLINOIS ENVIRONMENTAL
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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached MOTION TO WITHDRAW A PORTION OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S PENDING 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.
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Chief, Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street
Suite 1800
Chicago, Illinois 60602

via electronic mail on October 15, 2009.

/s/Katherine D. Hodge
Katherine D. Hodge

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IN THE MATTER OF:)
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NO_x TRADING PROGRAM:) R06-22
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**MOTION TO WITHDRAW A PORTION OF THE
ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S PENDING
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 hereby moves to withdraw the portion of its pending Motion for Reconsideration and Clarification of the Illinois Pollution Control Board's August 20, 2009 Order ("Motion") as it relates to IERG's request for reconsideration. At the same time, IERG hereby states that it wishes to maintain the portion of its pending Motion that relates to IERG's request for clarification.

I. PROCEDURAL HISTORY

On September 14, 2009, IERG filed a Motion for Reconsideration and Clarification of the Illinois Pollution Control Board's August 20, 2009 Order, requesting that the Illinois Pollution Control Board ("Board") reconsider its determination that an emergency does not exist warranting the adoption of an emergency rule and clarify whether the Board will accept a rulemaking proposed pursuant to Section 9.9 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/9.9, from parties other than the Illinois Environmental Protection Agency ("Illinois EPA"). On

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September 29, 2009, the Illinois EPA filed a Motion to File Instantly 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 ("Illinois EPA Motion") requesting a two-week extension of the deadline to respond to IERG's Motion. The Illinois EPA's stated basis for the request was that it was involved in discussions with IERG regarding issues raised in the Motion. The Illinois EPA further reported that IERG had been informed of the request for extension of time and did not object.

On October 1, 2009, via Hearing Officer Order, the Board granted the Illinois EPA's Motion and directed the Illinois EPA to file its response to IERG's Motion on or before Tuesday, October 13, 2009. Hearing Officer Order, *In the Matter of: NOx Trading Program: Amendments to 25 Ill. Adm. Code Part 217, R06-22* (Ill.Pol.Control.Bd. Oct. 1, 2009). On October 14, 2009, the Illinois EPA filed a second Motion to File Instantly and For Extension of Time to File Response to Motion for Reconsideration and Clarification of the Illinois Pollution Control Board's August 29, 2009 Order. The Illinois EPA stated that it is in discussions with IERG regarding the issues raised in the Motion and requested an extension of time to file a response to IERG's Motion until October 26, 2009.

II. WITHDRAWAL OF PORTION OF IERG'S PENDING MOTION RELATED TO REQUEST FOR RECONSIDERATION

IERG appreciates the willingness of the Illinois EPA to clarify and address the compliance obligations of IERG's Member companies following the Board's August 20, 2009 Order denying IERG's request for emergency rulemaking to adopt an emergency rule for the regulation of nitrogen oxide ("NOx") emissions of non-electrical generating units ("Non-EGUs") for the 2009 ozone season.

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According to the Illinois EPA, the State has “opted to meet the NO_x SIP Call emission budget requirement without having Non-EGUs participate in a NO_x trading program.” Letter from John J. Kim, Chief Legal Counsel, Illinois EPA to Deirdre K. Hirner, Executive Director, IERG (Oct. 9, 2009), attached hereto as Exhibit 1. The Illinois EPA also states that it has discussed with the United States Environmental Protection Agency (“USEPA”) that sufficient emissions and permit restrictions, regulations and consent decrees are in place, at this time, to demonstrate that Illinois can meet its NO_x budget obligations for the 2009 ozone season. *See* Exhibit 1. In addition, USEPA has indicated that it looks forward to working with the Illinois EPA in evaluating the adequacy of those restrictions in meeting emission budget requirements of the NO_x SIP Call. *See* Letter from Cheryl L. Newton, Director, Air and Radiation Division, USEPA Region V to Laurel Kroack, Chief, Bureau of Air, Illinois EPA (Sept. 24, 2009), attached hereto as Exhibit 2. The Illinois EPA and USEPA have indicated, as more fully described in Exhibits 1 and 2, that since Non-EGUs in Illinois are not currently part of the CAIR NO_x Ozone Season Trading Program, these sources currently have no compliance obligation to hold NO_x allowances on November 30, 2009, in an amount equal to their 2009 ozone season emissions. *See* Exhibit 1 and Exhibit 2. Similarly, the Illinois EPA has determined that the obligation to hold NO_x allowances at the end of the 2009 ozone season is no longer an applicable requirement as defined in Section 39.5(1) of the Act, and that Clean Air Act Permit Program (“CAAPP”) permits may be amended accordingly pursuant to the minor permit modification provisions set forth in Section 39.5(14) of the Act. *See* Exhibit 1.

IERG agrees that the statements made by the Illinois EPA and USEPA, together with the finding that sources may accordingly amend their CAAPP permit requirements through the minor permit modification process, substantially addresses the compliance obligation to hold NOx allowances for the 2009 ozone season.

Therefore, based on the representations made by the Illinois EPA and USEPA in Exhibits 1 and 2, IERG respectfully withdraws the portion of its pending Motion related to its request for reconsideration.

III. MAINTENANCE OF PORTION OF IERG'S PENDING MOTION RELATED TO REQUEST FOR CLARIFICATION

In its pending Motion, IERG also requests clarification regarding “whether the Board will accept a rulemaking proposal proposed pursuant to Section 9.9 of the Act from parties other than the Illinois EPA.” Motion at 14. IERG does not withdraw this portion of the pending Motion, but rather respectfully maintains its request that the Board provide clarification on this issue as described in the pending Motion.

IV. CONCLUSION

IERG appreciates the efforts made by the Illinois EPA to clarify and address the compliance obligations of IERG's Member companies related to potential violation of Subpart U requirements and CAAPP permit conditions requiring that sources hold sufficient NOx allowances equal to their 2009 ozone season emissions on November 30, 2009. IERG thanks the Illinois EPA for its actions to secure a letter from USEPA substantiating the Illinois EPA's position that sources subject to Subpart U have no compliance obligation to hold NOx allowances for the 2009 ozone season.

WHEREFORE, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP requests that the Board grant this Motion to withdraw the portion of IERG's pending

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Motion related to the request for reconsideration. IERG further states that it wishes to maintain the portion of its pending Motion related to the request for clarification and requests that the Board provide such clarification as requested on the issues raised therein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: October 15, 2009

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

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General Counsel
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