

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 WITHDRAW PROPOSAL AND CLOSE DOCKET

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 Withdraw Proposal and Close Docket, and, respectfully requests that the Illinois Pollution Control Board (~~Board~~) grants this Motion for Withdrawal and Closure. In support of its Motion, the Illinois EPA states as follows:

1. 35 Ill. Adm. Code Part 217.Subparts T, U, and W were adopted by the Board on December 21, 2000, March 1, 2001, and April 5, 2001, respectively. All three Subparts were approved by the United States Environmental Protection Agency (~~USEPA~~), as part of the Illinois State Implementation Plan (~~SIP~~) for ozone on November 8, 2001. See, 66 *Fed. Reg.* 56449. Subparts T, U, and W regulated nitrogen oxide (NO_x) emissions from large cement kilns, industrial boilers (hereinafter ~~Non-EGUs~~) and utility boilers (hereinafter ~~EGUs~~), respectively. Illinois was required to regulate these sources pursuant to the NO_x SIP Call. See, 63 *Fed. Reg.* 557356 (October 27, 1998). The control of NO_x emissions is needed to address inter-state and intra-state air pollution.

2. On January 17, 2006, the Illinois EPA filed a proposal docketed as R06-22 that proposed to amend applicable test methods and monitoring provisions, update Subpart U to reflect changes of ownership and fixed allocations, simplify the administration of the program, and address the sale of NO_x allowances for Non-EGUs.

3. On May 12, 2005, the Clean Air Interstate Rule (~~CAIR~~) was adopted with the

purpose of replacing the NO_x SIP Call Trading Program beginning with the 2009 control period and added two new trading programs addressing annual emissions of NO_x and sulfur dioxide for EGUs. *Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to Acid Rain Program; Revisions to the NO_x SIP Call*, 70 *Fed. Reg.* 25162 (May 12, 2005). No new emissions requirements were included for Non-EGUs. Provisions implementing CAIR for EGUs in Illinois were adopted by the Board in 35 Ill. Adm. Code 225 (R06-26) and approved by USEPA on October 16, 2007. 72 *Fed. Reg.* 58528.

4. CAIR treated Non-EGUs differently than EGUs. States are required to meet a NO_x emissions budget equal to the one set under the NO_x SIP Call for Non-EGUs, but are not required to include Non-EGUs in a seasonal ozone NO_x trading program, and are only allowed to include Non-EGUs in the annual NO_x trading program as opt-in units. *Id.* CAIR did not tighten the NO_x emissions requirements as they applied to the seasonal emissions of Non-EGUs and did not require the implementation of an annual program for these sources.

5. While the docket for R06-22 was pending, the federal CAIR rule was reviewed by the United States Court of Appeals pursuant to a number of petitions. On July 11, 2008, the United States Court of Appeals vacated the CAIR rule in its entirety and remanded the rule back to USEPA for revision. *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008). The court stated that CAIR must be vacated “because very little will survive remand in anything approaching recognizable form.” USEPA’s approach—regionwide caps with no state-specific quantitative contribution determinations or emissions requirements—is “fundamentally flawed.” *Id.* at 58-59. The court in its July 2008 opinion stated that pending the remand of the CAIR program to USEPA, the provisions of the NO_x SIP Call Trading Program would remain in place. *Id.*

6. The same parties that had petitioned for review, along with USEPA, then

petitioned for rehearing on the court's decision to vacate and requested that the CAIR rule be reinstated during the remand. On December 23, 2008, the court granted the rehearing and unvacated CAIR with implementation to begin with the original control period in 2009. *North Carolina v. USEPA*, 550 F.3d 1176 (C.A.D.C. Cir. 2008).

7. In light of the CAIR July 2008 decision remanding all of CAIR and requiring USEPA to start its analysis anew, the Illinois EPA did not proceed with a proposal to address NO_x emissions from the Non-EGUs pursuant to CAIR because the rule had been vacated and the future of the CAIR trading programs faces many uncertainties.

8. When the December 2008 decision reinstated the CAIR rule until USEPA completes a rulemaking addressing the July 2008 decision, the Illinois EPA also did not proceed with the clean-up of the older NO_x SIP Call Trading Program as proposed in R06-22 because USEPA stated that it would no longer allocate NO_x allowances or administer the NO_x SIP Call Trading Program.

9. Then, the Illinois EPA contacted USEPA about compliance with the NO_x Budget for Non-EGUs because the NO_x SIP Call Trading Program was no longer operating and the future of the new NO_x Trading Program (CAIR) is extremely uncertain. USEPA responded by letter. (Att. A) USEPA indicated that it would no longer be implementing the NO_x SIP Call, and that Non-EGUs would no longer be required to hold NO_x allowances after the 2008 control period so long as state could demonstrate that the Non-EGU portion of the NO_x Budget was being met by retention of the existing requirements for monitoring, reporting and recordkeeping.

10. The amendments proposed in R06-22 for updating NO_x allocations under the NO_x SIP Call, including provisions for low mass emitters and other amendments, are now moot because USEPA is no longer administering the NO_x SIP Call program. Any amendments to the NO_x SIP Call Trading Program are, therefore, unnecessary and not federally approvable. As the

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS)
) **SS**
COUNTY OF SANGAMON)
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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served electronically the attached MOTION TO WITHDRAW PROPOSAL AND CLOSE DOCKET of the Illinois Environmental Protection Agency upon the following persons:

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ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

/s/

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

Dated: August 19, 2010

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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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

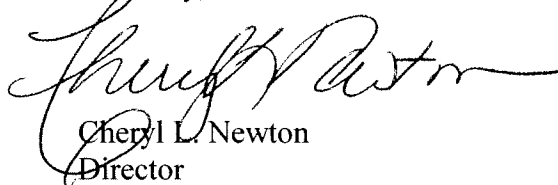
non-EGUs in the State's NOx SIP Call trading program." (72 FR 58532, October 16, 2007.)

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-EQU 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,



Cheryl L. Newton
Director

Air and Radiation Division