

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
NO_x 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 the **ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO THE MOTION TO WITHDRAW PROPOSAL AND CLOSE DOCKET**, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: September 2, 2010

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

Alec M. Davis
General Counsel
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP
215 East Adams Street
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IN THE MATTER OF:)
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**ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE
TO THE MOTION TO WITHDRAW PROPOSAL AND CLOSE DOCKET**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by and through its attorneys, Alec M. Davis and HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.500(d), and for its Response to the Motion to Withdraw Proposal and Close Docket, states as follows:

1. On August 19, 2010, the Illinois Environmental Protection Agency ("Illinois EPA") filed a Motion to Withdraw Proposal and Close Docket ("Motion") in the above-captioned rulemaking. Illinois EPA alleges that its "original purpose of the docket has been rendered moot by the CAIR rule," and thus it is requesting that its proposal be withdrawn and the docket closed. Motion at ¶ 10. In addition, Illinois EPA stated that it is "submitting a new regulatory proposal sunsetting the provisions of the Subpart U that USEPA is no longer administering and retaining the provisions in Subpart U that are necessary to demonstrate compliance with the NO_x Emissions Budget." *Id.* at ¶ 11.

2. On August 19, 2010, Illinois EPA filed a new regulatory proposal with the Illinois Pollution Control Board ("Board"), which has been captioned as *In the Matter of: Regulatory Proposal for NO_x Trading Program Sunset Provisions for Non-Electric*

Generation Units ("Non-EGU."): Amendments to 35 Ill. Adm. Code Part 217, Subpart U, R11-08.

3. IERG has been an active participant in this rulemaking and intends to participate in the R11-08 rulemaking. As such, IERG does not object to closing the R6-22 docket, but respectfully requests that the Board defer closing the R6-22 docket until it has taken final action in R11-08 rulemaking and, as discussed below, Illinois EPA has clarified the method by which the State will demonstrate compliance with the NO_x SIP Call requirements.

4. Illinois EPA's Motion explains that 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." Motion at ¶ 9. In response, USEPA stated:

The emission budget requirements of the NO_x SIP Call regulations remain in effect. If Illinois chooses to include only EGUs in the CAIR NO_x 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 NO_x SIP Call. . . . We look forward to working with you as you evaluate the adequacy of those restrictions in meeting emission budget requirements of the NO_x SIP Call, now and in the future.

* * *

. . . I look forward to working with you on your evaluation of alternative means of meeting applicable requirements. . . .

Motion at Attachment A.

5. Illinois EPA has given no indication as to the alternative means by which it intends to demonstrate compliance with the NO_x SIP Call requirements. Because any such alternative may require additional restrictions on the regulated community, closing the R6-22 docket is premature. Further, IERG respectfully asks that the Board request a

status report from Illinois EPA on its evaluation of the method by which it will demonstrate compliance with the NO_x SIP Call requirements. Such a report is appropriate since it is IERG's understanding that Illinois EPA has not taken any action to show how the NO_x SIP Call requirements will be met, which creates uncertainty for the regulated community regarding how it may be regulated in the future.

6. Leaving the R6-22 docket open until the R11-08 rulemaking is final and until Illinois EPA clarifies the method by which it will demonstrate compliance with the NO_x SIP Call requirements does not prejudice any parties and allows the parties to participate, if necessary, in the R6-22 rulemaking should Illinois EPA's actions in respect to the NO_x SIP Call so warrant or should the R11-08 rulemaking be delayed.

WHEREFORE, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP respectfully requests that the Board defer closing the R6-22 docket until it takes final action in the R11-08 rulemaking and Illinois EPA clarifies the method by which the State will demonstrate compliance with the NO_x SIP Call requirements.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: September 2, 2010

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

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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO THE MOTION TO WITHDRAW PROPOSAL AND CLOSE DOCKET upon:

Mr. John T. Therriault
Assistant Clerk of the Board
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via electronic mail on September 2, 2010.

/s/Katherine D. Hodge

Katherine D. Hodge