

ILLINOIS POLLUTION CONTROL BOARD
September 2, 2010

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM SUNSET) R11-8
PROVISIONS FOR NON-ELECTRIC) (Rulemaking - Air)
GENERATING UNITS:)
AMENDMENTS TO 35 ILL.)
ADM. CODE PART 217.SUBPART U)

ORDER OF THE BOARD (by G.L. Blankenship):

On August 19, 2010, the Illinois Environmental Protection Agency (Agency) filed a proposal for amendments to the Board's air rules pursuant to the general rulemakings provisions of Sections 10, 27 and 28 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/10, 27 and 28 (2008)) and the Board's procedural rules at 35 Ill. Adm. Code 102.202(b).

In the Statement of Reasons (SR) accompanying the proposal, the Agency states that the proposed amendments would sunset the trading provisions of the Nitrogen Oxide SIP Call Trading Program (NO_x Trading Program). SR at 3. The sole provisions to be amended involve the holding and trading provisions in Part 217.Subpart U, codified at 35 Ill. Adm. Code Part 217. Subpart U (Subpart U). For the reasons stated below, the Board accepts the proposal for hearing.

THE PROPOSAL

By way of background, the Agency explains that on March 1, 2001, the Board adopted Subpart U. SR at 1. Under the NO_x Trading Program of the United States Environmental Protection Agency (USEPA), USEPA required that Illinois regulate non-electric generation units (Non-EGUs), and the Board adopted Subpart U to regulate NO_x emissions from these Non-EGUs. *Id.*, citing 63 Fed. Reg. 57356 (October 27, 1998). On November 8, 2001, USEPA approved Subpart U as part of the Illinois State Implementation Plan (SIP) for ozone. SR at 1. Specifically, Subpart U implements USEPA's NO_x Trading Program to reduce ozone transport from Non-EGUs and satisfies Illinois' obligations under Sections 110(a) (2) and 126 of the Clean Air Act (CAA) and 40 CFR 51.121. SR at 1-2.

On May 12, 2005, Congress adopted the Clean Air Interstate Rule (CAIR) to replace the NO_x Trading Program, beginning with a control period in 2009. *Id.* at 2. On October 16, 2007, USEPA approved the Board's provisions implementing CAIR for utility boilers (EGUs) in 35 Ill. Adm. Code 225. *Id.* at 2, citing 72 Fed. Reg. 58528. While state processes for EGUs were pending, the United States Court of Appeals was reviewing CAIR pursuant to several petitions for review. SR at 2. On July 11, 2008, the United States Court of Appeals vacated the CAIR rule and remanded the rule back to USEPA for revision, ordering that the provisions of the NO_x Trading Program would remain, pending the remand. *Id.*, citing North Carolina v. USEPA, 531 F.3d 896 (C.A.D.C. Cir. 2008).

However, the same parties that petitioned for review then petitioned for rehearing on the court's decision and requested that the court reinstate CAIR during the remand rather than the provisions of the NO_x Trading Program. SR at 2. Consequently, on December 23, 2008, the court granted the rehearing and reinstated that CAIR begin implementation with the original 2009 control period. *Id.* at 2, citing North Carolina v. USEPA, 550 F.3d 1176 (C.A.D.C. Cir. 2008).

The Agency describes that, as a result of the court reinstating CAIR, Illinois' Non-EGUs no longer need to comply with the NO_x Trading Program requirements for holding and trading NO_x allowances for any control period after 2008 because USEPA is no longer allocating allowances for the NO_x Trading Program. SR at 3, citing Att. A (Letter from USEPA, dated September 24, 2009). Therefore, Subpart U is now moot where it requires that Non-EGUs hold their allowances for the 2010 ozone season. *Id.* However, to ensure that Illinois continues to satisfy its NO_x budget, Non-EGUs must continue monitoring, reporting, and recordkeeping under Subpart U. *Id.*

The Agency explains that retaining Subpart U "raises the specter of unenforceable requirements and leads to confusion as to the applicable requirements." *Id.* at 3. Further, the Agency argues that "[u]ntil the provisions of Subpart U that pertain to the holding and trading of NO_x allowances under the NO_x Trading Program are sunsetted, this confusion will remain." *Id.*

Fifty-two existing Non-EGU units, 4 of which are no longer operating, and 2 new Non-EGU units are currently subject to the NO_x Trading Program and will not be subject to the holding and trading provisions of the NO_x Trading Program if the Board sunsets these provisions of Subpart U. *Id.* at 3-4. According to the Agency, the amendments would impose no new requirements or costs on these Non-EGUs and would eliminate obsolete requirements. *Id.* at 4. The Agency proposes that the Board sunset any requirements related to the holding and trading portion of the NO_x Trading Program as set forth in Subpart U, beginning with the 2009 control period, while retaining the provisions for violations that occurred in control periods prior to 2009 and the provisions necessary to show compliance with Illinois' Non-EGU NO_x Budget. *Id.*

The Agency further explains that the proposed amendments are both technically and economically feasible because they will "clarify the applicable requirements, e.g., monitoring, reporting, and recordkeeping requirements, and delete obsolete requirements, e.g., holding of NO_x allowances and permitting [where] USEPA has stopped allocating NO_x allowances for the NO_x SIP Call Trading Program." *Id.* at 4-5. In addition, the Agency states that it has discussed these amendments with the Illinois Environmental Regulatory Group (IERG) and notified the IERG via e-mail that it intended to file this proposal. *Id.* at 6. The Agency believes that interested parties have not identified significant issues. *Id.*

CONCLUSION

The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102.202. The Board accepts the petition for hearing. In the interests of administrative economy, the Board encourages its hearing officer to make every effort to coordinate hearings in this

matter with hearings in other dockets. But, in so saying, the Board does not intend that this proceeding be unduly delayed awaiting pending activity in other dockets.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 2, 2010, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board