

ILLINOIS POLLUTION CONTROL BOARD

October 19, 2000

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM. CODE 217.SUBPART) R01-17
U, NO_x CONTROL AND TRADING PROGRAM FOR) (Rulemaking – Air)
SPECIFIED NO_x GENERATING UNITS, SUBPART X,)
VOLUNTARY NO_x EMISSIONS REDUCTION)
PROGRAM, AND AMENDMENTS TO 35 ILL. ADM.)
CODE 211)
)
)

Proposed Rule. First Notice.

OPINION OF THE BOARD (by M. McFawn):

On October 16, 2000, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend 35 Ill. Adm. Code 211 and 217 of the Illinois air regulations. The Agency proposes to have the Board add new Subparts U and X to Part 217, and to make various amendments to Part 211. The rules at new Subpart U are proposed to control the emissions of nitrogen oxides (NO_x) from specified fossil fuel-fired stationary boilers, combustion turbines, and combined cycle systems. The rules at new Subpart X are proposed to obtain voluntary reduction of emissions of NO_x from other specified sources for the purpose of transferring NO_x allowances created by those reductions from the non-trading portion of the statewide NO_x budget, as established in the NO_x SIP Call, 73 Fed. Reg. 57356 (October 27, 1998),¹ to either the electrical generating unit (EGU) or non-EGU portion of the NO_x trading budget. The controls would be effective during the period May 1 through September 30 of each year, beginning in 2003.

The Agency has stated that the proposed amendments are intended to meet several obligations of the State of Illinois (State) under the federal Clean Air Act Amendments of 1990 (CAA) (42 U.S.C. §§ 7401 *et seq.* (1990)). Section 107(a) of the CAA (42 U.S.C. § 7407(a) (1990)) imposes on the State the primary responsibility for ensuring that Illinois meet the National Ambient Air Quality Standard (NAAQS) for ozone. It requires the State to submit a state implementation plan (SIP) that specifies emission limitations, controls, and other measures necessary for the attainment, maintenance, and enforcement of the NAAQS in this State. This rulemaking will allow Illinois:

1. to satisfy a portion of Illinois' obligation to submit a State Implementation Plan (SIP) to address the requirements of the so-called NO_x SIP Call, 63 Fed. Reg. 57356 (Oct. 27, 1998), by implementing the NO_x Trading Program, 40 C.F.R. 96, and determining source NO_x allowance allocations as part of that program; and

¹ The NO_x SIP Call (entitled "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Regions for Purpose of Reducing Regional Transport of Ozone") is a regulation promulgated by United States Environmental Protection Agency (USEPA) to address ozone transport in the area of the country largely east of the Mississippi River, published on October 27, 1998, at 63 Fed. Reg. 57356.

2. to meet the applicable requirements of Section 9.9 of the Environmental Protection Act (Act) 415 ILCS 5/9.9 (1998).

The adoption by the Board of these amendments is authorized under Section 28.5 of the Act (415 ILCS 5/28.5 (1998)). Section 28.5 provides for “fast-track” adoption of certain regulations necessary for compliance with the CAA. In accordance with the procedures in Section 28.5, most specifically Section 28.5(f), the Board will adopt today the proposed amendments for first-notice publication in the *Illinois Register* under the Illinois Administrative Procedure Act (5 ILCS 100 (1998)) without commenting on the merits of the proposal. These proposed rules and amendments are set forth in a separate Board order for administrative ease of handling.

With the opening of this docket, the Board currently has four NO_x rulemakings pending. The Agency has previously filed two regulatory proposals in response to the NO_x SIP Call, 63 Fed. Reg. 57356 (October 27, 1998). See also Proposed New 35 Ill. Adm. Code 217.Subpart W, The NO_x Trading Program For Electrical Generating Units, and Amendments to 35 Ill. Adm. Code 211 and 217 (July 13, 2000), R01-9, and Proposed New 35 Ill. Adm. Code 217.Subpart T, Cement Kilns, and Amendment to 35 Ill. Adm. Code 211 and 217, (August 24, 2000), R01-11. At the same time it filed this proposal, the Agency also filed a third regulatory proposal to amend Subpart V of Part 217. See Proposed Amendments to 35 Ill. Adm. Code 217.Subpart V, Electric Power Generation (October 19, 2000), R01-16.

PROCEDURAL MATTERS

Agency Motion for Alternative Filing Requirements

Along with the proposal, the Agency filed a motion to waive the filing requirements found at 35 Ill. Adm. Code 102.120. First, the Agency requests that the Board waive the requirement that the Agency provide an entire copy of the proposal to the Attorney General’s Office and the Department of Natural Resources (DNR). The Agency assures the Board that it discussed the matter with both the Attorney General’s office and the DNR and that both agreed that the Agency does not need to supply their offices with a copy of the entire proposal, provided that both offices are notified that a proposal has been made and where the proposal can be reviewed (Mot. for Waiver of Req. at 2).

Second, the Agency requests that it be allowed to submit fewer copies of the documents required pursuant to 35 Ill. Adm. Code 102.120 and Section 28.5(e)(7) of the Act. Pursuant to Section 102.120 of the Board’s procedural rules the Agency is required to file an original and nine copies of the proposal with the Board. The Agency asks that it be allowed to file instead one original and four complete copies of the proposal, in addition to five partial copies that consists of the following: the pleadings, the applicable federal guidance documents, and the text of the proposed rules absent supporting exhibits. Furthermore, the Agency requests that it be required to provide the Board with less than the original and nine copies of documents it is required to file pursuant to Section 28.5(e)(7) of the Act. The Agency is required by that Section of the Act to file the documents it relied on in development of the proposal and intends to rely on at hearing. 415 ILCS 5/28.5(e)(7). Instead, the Agency proposes that it be allowed to provide the Board with five copies of each of 11 documents listed as items (d) through (n) in paragraph 4 of its motion, and that it file no copies of three additional documents (Mot. for Waiver of Req. at 2). Those three

documents are the Clean Air Act, the Environmental Protection Act, and Title 35 of the Illinois Administrative Code. The Agency requests a complete waiver for the three documents (listed as items (a) through (c) in paragraph 4 of its motion because those documents are readily accessible to the Board. *Id.* at 4.

The Board grants the Agency's motion. The Agency does not need to file a copy of the regulatory proposal with the Attorney General's office or the DNR. The Board notes that the Clerk of the Board will send a copy of this opinion and accompanying order that contains the proposed amendments to both offices. The Board accepts the Agency's proposal to file one original and four complete copies of its proposal, and five partial copies of the supporting documents. The Board also reduces the number of supporting documents otherwise required to the number requested in the Agency's motion.

Consecutive Hearings

As mentioned above, the Agency filed R01-16, a proposal to amend Subpart V of Part 217, on the same day that it filed this rulemaking proposal. See Proposed Amendments to 35 Ill. Adm. Code 217.Subpart V, Electric Power Generation (October 19, 2000), R01-16. The Board is issuing separate first notices for these rulemakings. Because the two proposals both address No_x controls and the participants interested in each proceeding overlap to a certain extent, the Board will hold the hearings in both matters consecutively.

Scheduling Constraints

Pursuant to Section 28.5 of the Act (415 ILCS 5/28.5 (1998)), the Board is required to proceed within set timeframes toward the adoption of the regulation. The Board has no discretion to adjust these timeframes under any circumstances. Today the Board adopts this proposal for first-notice publication in the *Illinois Register* under the Illinois Administrative Procedure Act (5 ILCS 100 (1998)) without commenting on the merits of the proposal. The following schedule indicates the dates on which the Board will act as provided in Section 28.5 of the Act (415 ILCS 5/28.5 (1998)):

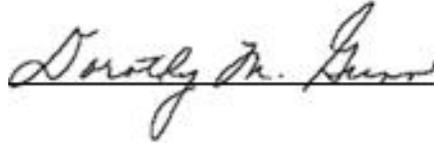
First Notice	on or before October 30, 2000
First Hearing	on or before December 10, 2000
Second Hearing	on or before January 9, 2001
Third Hearing (if necessary)	on or before January 23, 2001
Second Notice (if 3rd hearing is canceled)	on or before February 23, 2001
(if 3rd hearing is held)	on or before March 15, 2001
Final Adoption	21 days after receipt of JCAR certificate of no objection

The third hearing may be canceled if unnecessary, as specified at Section 28.5(g)(3). The Board will proceed in this matter as required by Section 28.5 of the Act (415 ILCS 5/28.5 (1998)) and as discussed in the Board's resolutions regarding Section 28.5 of the Act. See RES 92-2 (October 28, 1992, and December 3, 1992).

In conclusion, the Board adopts this proposal for first-notice publication in the *Illinois Register* under the Illinois Administrative Procedure Act (5ILCS 100 (1998)) without commenting on the merits of the proposal or any substantive change to the proposal as filed by the Agency. The

Agency's motion to modify the filing requirements found at Sections 101.103(b) and 102.120 of the Board's procedural rules and Section 28.5(e)(7) of the Act are granted. Additional detail about the proceeding and the hearings will be contained in a hearing officer order that will be issued shortly.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion was adopted on the 19th day of October 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board