ILLINOIS POLLUTION CONTROL BOARD
May 17, 2007

IN THE MATTER OF:	)	
	)	
FAST-TRACK RULES UNDER NITROGEN OXIDE (NO_x) SIP CALL PHASE II AMENDMENTS TO 35 ILL. ADM. CODE SECTION 201.146 and PARTS 211 and 217	)	R07-18 (Rulemaking - Air)
	)	
IN THE MATTER OF:	)	
	)	
SECTION 27 PROPOSED RULES FOR NITROGEN OXIDE (NO_x) EMISSIONS FROM STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES AND TURBINES: AMENDMENTS TO 35 ILL. ADM. CODE PARTS 211 and 217	)	R07-19 (Rulemaking - Air)

ORDER OF THE BOARD (by A.S. Moore):

On April 6, 2007, the Illinois Environmental Protection Agency (Agency) filed a proposal for rulemaking pursuant to Sections 9.9, 10, 27, and 28.5 of the Environmental Protection Act (Act) (415 ILCS 5/9.9, 10, 27, and 28.5 (2004)). The proposal addresses the control of nitrogen oxides (NO_x) emissions from stationary reciprocating internal combustion engines and turbines. On April 19, 2007, the Board accepted the proposal for first notice under the provisions of Section 28.5 of the Act (415 ILCS 5/28.5 (2004)) without commenting on the merits of the proposal.

The Board has received two filings objecting to acceptance of the proposal under Section 28.5, one filed by a consortium of natural gas supplies on April 16, 2007, and one filed by the Illinois Environmental Regulatory Group (IERG) on April 17, 2007. The objectors maintain that the entire proposed rule is not "required to be adopted" under the provisions of the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*). Both objectors argue that the Board should bifurcate this proceeding to consider the portion of the proposed rule applicable to NO_x State Implementation Plan (SIP) Call Phase II units in one docket under Section 28.5 and to consider the remainder of the Agency's proposal in a second docket under Section 27. On May 1, 2007, the Agency responded separately and in opposition to the two objections. The Board allowed the filing of replies, which the Board received on May 8, 2007.

In today's order, the Board first provides the procedural history of this proceeding. The Board then summarizes the arguments made in the Agency's Statement of Reasons, the objectors' filings, the Agency's responses, and the objectors' replies.

After analyzing the issues raised, the Board concludes that part of the proposal is not "required to be adopted" by the CAA. Accordingly, the Board bifurcates this proposal by continuing to consider the portion applicable to the 28 internal combustion engines affected by the NO_x SIP Call Phase II under Section 28.5 in docket R07-18. The Board will consider the remainder of the proposal in a separate docket, R07-19, under Section 27.

PROCEDURAL HISTORY

Rulemaking Proceeding

On April 6, 2007, the Agency submitted to the Board a rulemaking proposal intended to reduce emissions of NO_x from stationary reciprocating engines and turbines. The Agency's submission included a technical support document (TSD). In its accompanying statement of reasons (Statement), the Agency invoked as statutory authorities for its submission Sections 9.9, 10, and 27 of the Act. Statement at 1, 7-8; *see* 415 ILCS 5/9.9, 10, 27 (2004)). The Agency also invoked Section 28.5 of the Act, which provides for "fast-track" proceedings applying "solely to the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA)." Statement at 8-11, citing 415 ILCS 5/28.5(a) (2004).

On April 16, 2007, ANR Pipeline Company, Natural Gas Pipeline Company, Trunkline Gas Company, and Panhandle Eastern Pipeline Company (collectively, the Pipeline Consortium) filed their "Objection to Use of Section 28.5 Fast Track Procedures for Consideration of Nitrogen Oxide Proposal as Filed" (Pipeline Obj.). On April 17, 2007, IERG filed its "Objection to Use of Section 28.5 'Fast-Track' Rulemaking for the Illinois Environmental Protection Agency's Proposed Rules" (IERG Obj.).

On April 19, 2007, the Board adopted an order accepting the Agency's proposal for hearing without commenting on its merits and sending the proposed rule to first notice under Illinois Administrative Procedure Act. *See* 5 ILCS 100/1-1 *et seq.* (2004). In the same order, the Board noted that it had received objections to the Agency's reliance on Section 28.5 procedures both from the Pipeline Opponents and from IERG. The Board directed that any response to the two objections be filed by May 1, 2007, and allowed the objectors to reply to the responses by May 8, 2007.

On May 1, 2007, the Agency filed a "Response to the Pipeline Consortium's Objection to Use of Section 28.5 Fast Track Procedures for Consideration of Nitrogen Oxide Proposal" (Agency Pipeline Resp.), accompanied by the affidavit of Robert Kaleel. Also on May 1, 2007, the Agency filed a "Response to the Illinois Environmental Regulatory Group's Objection to Use of Section 28.5 Fast Track Procedures for Consideration of Nitrogen Oxide Proposal" (Agency IERG Resp.), accompanied by an affidavit of Robert Kaleel.

On May 8, 2007, the Pipeline Consortium filed a "Reply to the Illinois Environmental Protection Agency's Responses to Objections to the Use of Section 28.5 Fast-Track Rulemaking Procedures in this Matter" (Pipeline Reply). Also on May 8, 2007, IERG filed a "Reply to Response to Objection to Use of Section 28.5 'Fast-Track' Rulemaking for the Illinois

Environmental Protection Agency's Proposed Rules" (IERG Reply), accompanied by an affidavit of Deirdre K. Hirner.

Circuit Court Complaint

The Board notes that, on May 14, 2007, the Pipeline Consortium filed in Sangamon County Circuit Court a complaint seeking declaratory and injunctive relief regarding the R07-18 rulemaking proceeding before the Board. The Pipeline Consortium asserts it brings the suit in Circuit Court "as a result of IPCB's illegal rulemaking procedure and the IEPA's illegal filing of a proposed rule with the IPCB." ANR Pipeline Company, Natural Gas Pipeline Company, Trunkline Gas Company, and Panhandle Eastern Pipe Line Company v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 07MR190 (Sangamon County Circuit Court). Generally, Plaintiffs allege that Section 28.5 of the Act (415 ILCS 5/28.5 (2004)), under which Clean Air Act "fast-track" rulemaking is carried out, is unconstitutional and cannot be used to adopt certain portions of IEPA's regulatory proposal in R07-18. The Plaintiffs seek a preliminary and permanent injunction barring IEPA and the Board from continued action under Section 28.5 of the Act concerning specified sections of the Agency's proposal and enjoining the Agency and the Board from proceeding on the Board's expedited hearing schedule under Section 28.5 with respect to those specified sections.

The Board notes that in its order dated April 19, 2007, in R07-18, two days after it received the last objection to the use of Section 28.5 procedures, it set an expedited schedule for briefing the issue in order "[t]o ensure that this rulemaking proceeds expeditiously." The Board received the final replies on that issue on May 8, 2007. Pursuant to the expedited schedule, the Board placed this docket on the agenda of its regularly-scheduled closed deliberative session on May 10, 2007. For its regularly-scheduled May 17, 2007 meeting, the Board placed this docket on its tentative agenda, which was first distributed on May 9, 2007, and on its final agenda. At all times, the Board has set and followed a schedule allowing it to resolve these objections before the first hearing begins.

STATUTORY BACKGROUND

Section 28.5 of the Act provides in pertinent part as follows:

> (a) This Section shall apply solely to the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA).
>
> * * *
>
> (c) For purposes of this Section, a "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, "requires to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules. All fast-track rules must be adopted under procedures set forth in this Section, unless another provision of this Act specifies the method for adopting a specific rule.

(d) When the CAAA requires rules other than identical in substance rules to be adopted, upon request by the Agency, the Board shall adopt rules under fast-track rulemaking requirements.

(e) The Agency shall submit its fast-track rulemaking proposal in the following form:

(1) The Agency shall file the rule in a form that meets the requirements of the Illinois Administrative Procedure Act and regulations promulgated thereunder.

(2) The cover sheet of the proposal shall prominently state that the rule is being proposed under this Section.

(3) The proposal shall clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other document upon which the rule is based.

(4) The supporting documentation for the rule shall summarize the basis for the rule.

(5) The Agency shall describe in general the alternative selected and the basis for the alternative.

(6) The Agency shall file a summary of economic and technical data upon which it relied in drafting the rule.

(7) The Agency shall provide a list of documents upon which it directly relied in drafting the rule or upon which it intends to rely at the hearings and shall provide such documents to the Board. Additionally, the Agency shall make such documents available at an appropriate location for inspection and copying at the expense of the interested party.

(8) The Agency shall include in its submission a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, and a list of sources expected to be affected by the rule to the extent known to the Agency.

* * *

(j) The Board shall adopt rules in the fast-track rulemaking docket under the requirements of this Section that the CAAA requires to be adopted, and may consider a non-required rule in a second docket that shall proceed under Title VII of this Act. 415 ILCS 5/28.5 (2004).

AGENCY STATEMENT OF REASONS

In its Statement of Reasons, the Agency argues that "[t]his regulatory proposal is properly submitted to the Board under Section 28.5 of the Act as a fast-track rulemaking proceeding." Statement at 8. The Agency notes that Section 28.5 "shall apply solely to the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA)." *Id.*, citing 415 ILCS 28.5(a) (2004). The Agency further notes that

> [f]or purposes of this Section, a 'fast-track' rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For purposes of this Section, 'requires to be adopted' refers only to those regulations or parts of regulations for which the United State Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules." Statement at 8, 9, citing 415 ILCS 5/28.5(c) (2004).

The Agency also cites section 28.5(d) of the Act, which provides that, "[w]hen the CAAA requires rules other than identical in substance rules to be adopted, upon request by the Agency, the Board shall adopt rules under fast-track rulemaking requirements." Statement at 8, 9, citing 415 ILCS 5/28.5(d) (2004).

The Agency states that it filed its proposal in order to satisfy Illinois' obligations under Phase II of the NO_x SIP Call of the United States Environmental Protection Agency (USEPA). Statement at 1. The Agency argues that satisfaction of these obligations "is clearly required" by the Clear Air Act (CAA). Statement at 9. Specifically, the Agency claims that "[t]he NO_x SIP Call was promulgated under Section 110(a)(2)(D) of the CAA, which requires states to develop SIPs to ensure that emissions from a source or group of sources do not significantly contribute to nonattainment, or interfere with the maintenance, of a NAAQS [National Ambient Air Quality Standard] in other states." *Id*., citing 42 U.S.C. 7410(a)(2)(D). The Agency also claims that the state must adopt Phase II rules and NO_x emission control regulations for engines and turbines in order to satisfy "the requirements of Section 172 and 182 of the CAA for submitting attainment demonstrations, RACT, and RFP." Statement at 9, citing 42 U.S.C. 7502, 7511a.

The Agency argues that "[i]f a state fails to submit plans as required for the NO_x SIP Call Phase II, attainment demonstrations, RACT, or RFP, [then] USEPA has the authority to impose a Federal Implementation Plan (FIP) pursuant to its authority under Section 110(c)(1) of the CAA." Statement at 9, citing 42 U.S.C. 7410(c)(1). The Agency further argues that USEPA could impose two different sanctions upon Illinois if the state fails to adopt rules allowing it to submit an approvable SIP. Statement at 10, citing 42 U.S.C. 7509. Specifically, the Agency claims that failure to adopt those rules could result in the loss of highway funds and in "the increase in the emissions offset requirement for New Source Review to 2:1." Statement at 10, citing 42 U.S.C. 7509(b)(1), 7509 (b)(2).

The Agency states that USEPA triggers the application of sanctions by finding that a state's plan for any area "is substantially inadequate to attain or maintain the relevant NAAQS." Statement at 10, citing 42 U.S.C. 7410 (k)(5). The Agency argues that, without the adoption of these proposed regulations, "Illinois will not be able to submit a plan that would demonstrate attainment or meet RACT or ROP requirements for the $PM_{2.5}$ or 8-hour ozone NAAQS." Statement at 10. The Agency suggests that, by definition, "a plan that fails to demonstrate attainment would be substantially inadequate and would trigger [CAAA] Section 179 sanctions." *Id*., citing 42 U.S.C. 7509(a).

The Agency states that implementation of the federal Clean Air Interstate Rule (CAIR) will not be sufficient to attain those NAAQS and that Illinois requires the additional reduction proposed in this rulemaking. Statement at 10; *see* Proposed New Clean Air Interstate Rule

_____2, NO_x Annual and NO_x Ozone Season Trading Programs, 35 Ill. Adm. Code 225, Subparts A, C, D, E, and F, R06-26 (Apr. 19, 2007) (first-notice opinion and order). The Agency claims that "[t]he Board has determined in the past that regulations adopted in order to obtain the reductions needed for attainment demonstrations and meeting other requirements under Section 182 of the CAA warranted the use of Section 28.5 of the Act to avoid sanctions." Statement at 10; *see* 42 U.S.C. 7511a. The Agency further claims that "the Board has the authority to adopt regulations to avoid sanctions for a failure to meet the requirements of Section 172 of the CAA as it is also contained in Part D of the CAA." Statement at 10-11 (citations omitted); *see* 42 U.S.C. 7502. The Agency concludes this claim by arguing that, "through past practice and as confirmed by relevant case law, the Board has recognized that failure to adopt regulations proposed for the purposes of meeting the requirements of Part D of the CAA would satisfy the requirements for a Section 28.5 rulemaking." Statement at 11.

The Agency notes that fast-track procedures do not apply to "identical in substance" rules. Statement at 11; *see* 415 ILCS 5/28.5(d) (2004). The Agency argues that it proposes Subpart Q in order to meet three federal requirements under the CAA and not to "mirror any federal guidance or rule." Statement at 11. The Agency argues that its "proposal is not identical in substance" and therefore not ineligible for consideration under the procedures of Section 28.5. *Id*.

PIPELINE CONSORTIUM'S OBJECTION

The Pipeline Consortium seeks to have the Board reject the Agency's request to consider the proposed rulemaking under the fast-track procedures of Section 28.5 of the Act. Pipeline Obj. at 1, citing 415 ICLS 5/28.5 (2004). The Pipeline Consortium argues that the proposal, "to the extent it applies to units other than NO_x SIP Call Phase II affected units, does not satisfy the requirements of Section 28.5 because application of the rule statewide is not 'federally required to be adopted' by the Clean Air Act, 42 U.S.C. § 7401, *et seq*." Pipeline Obj. at 1. The Pipeline Consortium claims that reliance on Section 28.5 in considering the Agency's proposal would be contrary to the legislature's intent in adopting that section and "an improper exercise" of that authority. *Id*. However, the Pipeline Consortium states that it:

> is willing to set aside its objection as to the portion of the Agency's proposal that applies to NO_x SIP Call Phase II affected units, but only if the Board grants the request of the Pipeline Consortium to bifurcate and move the portion of the Agency's proposal that does not apply to NO_x SIP Call Phase II affected units to a separate docket that proceeds under Section 27 of the Act. *Id*. at 1-2; *see* 415 ILCS 5/27 (2004).

The Pipeline Consortium states that "[t]he Board has, in the past, segregated portions of a proposed rule into a separate docket where the Board determines that it needs additional information." Pipeline Obj. at 10 n.8, citing Tiered Approach to Corrective Action Objectives (TACO), 35 Ill. Adm. Code Part 742, R97-12(A) (April 17, 1997). The Pipeline Consortium submitted as Exhibit A an edited version of the Agency's proposal including NO_x SIP Call Phase II units "that may proceed under Illinois' fast track process." Pipeline Obj. at 10. The Pipeline Consortium states that "[t]he proposal that should proceed under Section 27 of the Act could

similarly be fashioned by addressing units and associated provisions excluded from Exhibit A and removing the Exhibit A affected units." *Id*.

The Pipeline Consortium argues that Section 28.5 "allows certain rules required under the federal Clean Air Act to proceed in an expedited schedule to prevent imposition of sanctions by the United States Environmental Protection Agency." Pipeline Obj. at 3. The Pipeline Consortium further argues that "[t]he intent and history of Section 28.5 demonstrate that the fast track procedures were meant as a narrow solution to a very particular problem, *i.e.*, that lengthy formal rulemaking processes could hinder the Board from promulgating rules required under the Clean Air Act in accordance with federally-imposed deadlines." *Id*. (citation omitted). The Pipeline Consortium notes that fast-track procedures are available only for consideration of rules required to be adopted by the CAA. *Id*.; *see* 415 ILCS 5/28.5(a) (2004). The Pipeline Consortium further notes that a proposed rule is "required to adopted" only if failure to adopt it would expose the state to the risk of federal sanctions. Pipeline Obj. at 3, citing 415 ILCS 5/28.5(c) (2004).

NO_x SIP Call

The Pipeline Consortium states that, after concluding that 23 jurisdictions contribute to the nonattainment of ozone standards in states downwind from them, USEPA "took final action in the NO_x SIP Call Rule to prohibit specified amounts of emissions of NO_x." Pipeline Obj. at 4. Specifically, the Pipeline Consortium states that USEPA "used its authority under Sections 110(a)(1) and 110(k)(5) and issued a SIP Call, requiring those 23 states to amend their SIPs to reduce NO_x emissions so as not to adversely affect the ozone attainment status of downwind states." *Id*.; *see* 63 F.R. 57,355 – 57,538 (Oct. 27, 1998).

The Pipeline Consortium states that, after various entities challenged the NO_x SIP Call in federal court, USEPA responded to the court's order by dividing the NO_x SIP Call into Phases I and II. Pipeline Obj. at 4. The Pipeline Consortium further states that, under Phase II, USEPA "required all states with large reciprocating internal combustion engines to develop SIPs by April 1, 2005 to achieve NO_x reductions commensurate with Phase II rule requirements." *Id*. The Pipeline Consortium argues that USEPA has allowed states to meet the NO_x emissions reduction requirements of the NO_x SIP Call either by regulating large internal combustion engines to meet NO_x reduction targets or by allowing individual companies to meet emissions reduction targets set for them. *Id*.

The Pipeline Consortium notes that USEPA has "found that Illinois had failed to submit the required SIP revisions in response to Phase II of the SIP Call." Pipeline Obj. at 5. As a consequence of this failure, claims the Pipeline Consortium, USEPA intends to develop a Federal Implementation Plan (FIP) that would become effective if the state failed to amend its SIP on a timely basis. *Id*., citing 71 Fed. Reg. 6347 (Feb. 8, 2006); *see* 42 U.S.C. 7410(c).

The Pipeline Consortium clams that "the NO_x SIP Call affected only large engines, with average ozone season emission in 1995 greater than one ton per day, which is equivalent to approximately 2,400 hp with 100% utilization for the entire 153-day season." Pipeline Obj. at 5. The Pipeline Consortium argues that IEPA has inappropriately concluded that the SIP Call

applies to engines equivalent to 1,500 hp. *Id*., citing TSD at 17. The Pipeline Consortium disputes IEPA's argument "that all elements of the proposal, including the regulation of *all* engines 500 hp and larger and turbines 3.5 MW [megawatt] and larger, regardless of their location, are authorized to proceed as a Section 28.5 fast track rulemaking." Pipeline Obj. at 5 (emphasis in original).

NO_x RACT

The Pipeline Consortium states that the Agency intends its proposal to satisfy the State's obligation under Phase II of the NO_x SIP Call "*as well as* the Clean Air Act's requirements for reasonable further progress, reasonably available control technology (RACT), rate-of-progress (ROP), and attainment demonstrations for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS)." Pipeline Obj. at 5 (emphasis in original), citing Statement at 1-2. Characterizing the Agency's proposal as a "veritable bundle of emission reduction strategies," the Pipeline Consortium argues that only those reductions applying to units in Phase II of the NO_x SIP Call are "even arguably federally necessary." Pipeline Obj. at 5.

The Pipeline Consortium argues that "[t]he Agency cannot use Phase II of the NO_x SIP CALL to justify the imposition of NO_x RACT." Pipeline Obj. at 6. The Pipeline Consortium claims that, "while additional NO_x reductions may eventually be necessary to address PM and ozone nonattainment, there is nothing under the NO_x SIP Call Phase II, or other existing federal law, that requires a state specifically to regulate internal combustion engines and turbines, let alone requires control of these engines statewide, or control of units as small as 500 hp and 3.5 MW." *Id*. at 5-6. The Pipeline Consortium further claims that "NO_x RACT is predominantly implemented in non-attainment area only, and USEPA only requires that the state *consider* NO_x RACT for sources in nonattainment areas." *Id*. at 6 (emphasis in original).

The Pipeline Consortium further argues that "the SIP Call clearly is based only on the 1-hour ozone NAAQS." Pipeline Obj. at 6, citing 69 Fed. Reg. 21,604-05 (April 21, 2004). Consequently, the Pipeline Consortium argues that "there is not an immediate time constraint or threat of federal sanctions pertaining to deficiencies associated with 8-hour ozone or fine particulate SIPS." Pipeline Obj. at 6. Consequently, the Pipeline Consortium claims that "the NO_x RACT provisions are not appropriate for a Section 28.5 proceeding to the extent they go beyond what is required for Phase II units." *Id*. If the Board accepts the Agency's claim that the NO_x RACT proposal is federally required by general SIP requirements, then the Pipeline Consortium urges "that at the very least, the portion of the NO_x RACT proposal that applies in attainment areas is not federally required and should be moved to a separate docket." *Id*. n.6.

The Pipeline Consortium disputes the Agency's claim that "it cannot 'submit a plan that would demonstrate attainment or meet RACT or ROP requirements for the $PM_{2.5}$ or 8-hour ozone NAAQS' without the proposed rule." Pipeline Obj. at 6, citing Statement at 10. The Pipeline Consortium claims that the Agency has not justified the control of all units at the proposed thresholds on a statewide basis or compared other approaches. Pipeline Obj. at 6. The Pipeline Consortium further claims that "[a]ny number of other measures or combinations of measures could be proposed that would achieve similar or greater reductions.' *Id*.

Furthermore, the Pipeline Consortium argues that Illinois would only experience consequences for failing to meet USEPA requirements if IEPA is tardy in addressing Phase I units. Pipeline Obj. at 6. The Pipeline Consortium further argues that "even those consequences may not be considered 'sanctions' within the meaning of Section 28.5." *Id*. Although USEPA's Finding of Failure indicates that "it will pursue a FIP should a submission to address Phase II of the SIP Call not be forthcoming," the Pipeline Consortium argues that "[i]t is well-established that the imposition of a FIP does not constitute a 'sanction' under the Clean Air Act." *Id*. at 7, citing Virginia v. EPA, 74 F.3d 517, 521 (4th Cir. 1996); Dynegy Midwest Generation, Inc. v. PCB, No. 06-CH-213 (Sangamon County Circuit Court) (May 1, 2006) (Order on Motion for Preliminary Injunction).

The Pipeline Consortium continues by arguing that "the Agency has also failed to demonstrate the rule's importance to protecting air quality." Pipeline Obj. at 7. Referring to modeling performed by the Lake Michigan Air Directors Consortium (LADCO), the Pipeline Consortium argues that "emission reductions for all units need not be adopted statewide to improve air quality in Illinois." *Id*., citing TSD, Attachment A (Assessment of Regional NO_x Emission in the Upper Midwest). Specifically, the Pipeline Consortium claims that "modeling shows that attainment area emissions from non-electricity generating units have a relatively minor impact relative to emissions within the nonattainment area, which have a far greater impact." Pipeline Obj. at 7. The Pipeline Consortium further claims that "[f]urther modeling is already underway that will refine the existing data." *Id*. The Pipeline Consortium claims that "[b]ifurcating this rulemaking by moving portions applicable to non-Phase II units to a separate docket will allow the Board to consider this new modeling before making a final decision on non-Phase II units and will not compromise the State's obligation to address Phase II of the SIP Call, in any way." *Id*.

Procedural Requirements

The Pipeline Consortium argues that the Board's recent mercury rulemaking proceeding illustrates the consequences "of allowing a proposed rule that is more stringent than required by federal law to proceed as a fast track rulemaking." Pipeline Obj. at 8, citing Proposed New 35 Ill. Adm. Code Part 225 Control of Emissions from Large Combustion Sources, R06-25. The Pipeline Consortium argues that, because the proposed rule is not in its entirety federally required, it is likely to succeed in arguing that it will suffer irreparable harm if the entire proposal proceeds on a fast track and in obtaining an order enjoining the Board from proceeding on that basis. Pipeline Obj. at 8-9; *see* Dynegy Midwest, No. 06-CH-213 (Sangamon County Circuit Court) (May 1, 2006) (Order on Motion for Preliminary Injunction). The Pipeline Consortium further argues that it "is entitled to a formal and complete rulemaking process, and the interest of the public will be better served by having costs of statewide application fully considered." Pipeline Obj. at 9, citing Dynegy Midwest, No. 06-CH-213 (Sangamon County Circuit Court) (May 1, 2006) (Order on Motion for Preliminary Injunction). The Pipeline Consortium claims that "[t]o do otherwise may only invite Court intervention, when it could have easily and appropriately been avoided." Pipeline Obj. at 9.

The Pipeline Consortium argues that "[i]n addition to a court proceeding to stop the rulemaking from going forward, appellate courts are also able to overturn a rule that is

promulgated outside of the Board's statutory authority." Pipeline Obj. at 9, citing Waste Management of Illinois, Inc. v. PCB, 595 N.E.2d 1171 (1st Dist. 1992). The Pipeline Consortium claims that, because "Section 28.5 is an exception to the Board's general rulemaking authority under the Act," an appellate court may set aside the rule if it believes "that the Board incorrectly misused its authority by adopting a statewide rule when there is no federal requirement to do so." Pipeline Obj. at 9, citing Ill. State Chamber of Commerce v. PCB, 384 N.E.2d 922 (1st Dist. 1978).

The Pipeline Consortium suggests that the Board should be particularly cautious about using fast track procedures in this case "because a number of features of the traditional Section 27 rulemaking procedure were eliminated under Section 28.5 to afford a truncated procedure." Pipeline Obj. at 9; *see* 415 ILCS 5/ 27, 28.5 (2004). The Pipeline Consortium argues that Section 28.5 "eliminated . . . the Board's responsibility to obtain an economic impact study." Pipeline Obj. at 9. The Pipeline Consortium expresses the belief that "the cost to the natural gas industry of application of the rule to non-Phase II units would exceed $80 million." *Id*. The Pipeline Consortium states that it and the "public interest must not be deprived of the ability to obtain an economic impact study to weigh the cost benefit of the State's proposal." *Id*. at 9-10.

IERG OBJECTION

IERG states that it "does not believe that the Proposed Rules are appropriate for a Section 28.5 'fast-track' rulemaking proceeding." IERG Obj. at 1. Noting the position taken by the Pipeline Consortium in its objection, IERG states that it "does not object to the use of Section 28.5 rulemaking for the 28 internal combustion engines that are affected by the NO_x State Implementation Plan Call Phase II." IERG Obj. at 2-3, citing Pipeline Obj. at 1-2. IERG further states, however, that "[a]ll other requirements in the Proposed Rules that would affect units other than the Phase II NO_x SIP Call Engines are non-required rules, and must be considered under a second docket that should proceed under Title VII of the Act. IERG Obj. at 2-3.

IERG argues that the Illinois General Assembly in enacting Section 28.5 "chose to limit fast-track proceedings to rules required to be adopted by the CAA where sanctions can be imposed for failure to adopt such rules." IERG Obj. at 4; *see* 415 ILCS 5/28.5 (2004). IERG claims that, without this limit, any rulemaking proposal related to the CAA could be placed on a fast track, resulting in less deliberation and fewer opportunities for public comment. IERG Obj. at 4.

IERG argues that the Agency's proposal should be bifurcated according to Section 28.5(j) of the Act, which provides that "[t]he Board shall adopt rules in the fast-track rulemaking docket under the requirements of this Section that the CAAA requires to be adopted, and may consider a non-required rules in a second docket that shall proceed under Title VII of this Act." IERG Obj. at 3-4, citing 415 ILCS 5/28.5(j) (2004). IERG states that the Board has severed an Agency rulemaking proposal into two dockets "because it concluded that sections of the proposed rulemaking were not federally required." IERG Obj. at 4, citing RACT Deficiencies – Amendments to 35 Ill. Adm. Code Parts 211 and 215, R89-16, slip op. at 8 (Feb. 8, 1990). In addition, IERG distinguishes this proposal from a recent fast-track rulemaking proposal in which the Board stated that "the approach taken by the Agency to meet the federal mandate is not

conducive to identifying and 'separating out' portions of the proposal for consideration under Section 27." IERG Obj. at 5, citing Proposed New 35 Ill. Adm. Code Part 225 Control of Emissions from Large Combustion Sources, R06-25, slip op. at 18 (April 20, 2006). IERG argues that, "[i]n the matter at hand, such a 'separating out' process is not difficult." IERG Obj. at 6. IERG proposes that a:

> first docket would be applicable only to the 28 listed Phase II NO_x SIP Call Engines and could proceed under Section 28.5 without the delay that could be caused by judicial review. The second docket would be applicable to the other potentially affected units and could proceed under the traditional rulemaking procedures provided in the Act. *Id*.; *see* 415 ILCS 5/27, 28.5 (2004).

IERG claims that "the Proposed Rules are intended to perform three primary regulatory functions and therefore affect three types of emission units." IERG Obj. at 6, citing Statement at 12-13. IERG further claims that USEPA "is not currently empowered to impose sanctions against the State for failure to adopt rules to meet such requirements." IERG Obj. at 7.

Attainment of the 8-hour Ozone and $PM_{2.5}$ NAAQS

In the first category, IERG places those units identified by the Agency as "units where emission 'reductions [are] needed for attainment of the [8-hour ozone and $PM_{2.5}$] NAAQS.'" IERG Obj. at 7, citing Statement at 12. IERG states that this category appears to include "internal combustion engines over 500 bhp [brake horsepower] and specified turbines at minor sources in nonattainment area and at all sources in attainment areas statewide" (Contested Sources). IERG Obj. at 7 (characterizing these as the "Improperly Affected Units"). IERG argues that, as applied to the Contested Sources, the Agency's proposed regulations "1) are nor required by the CAA; 2) could not trigger sanctions if not approved; and 3) are, in any case, not ripe for promulgation under Section 28.5 because the rules are based on preliminary modeling and have been drafted without the benefit of finalized guidance from the USEPA." *Id*.

IERG states that the Agency's Statement of Reasons "repeatedly notes the general duty of the Illinois EPA to provide attainment demonstrations, and to eventually include such demonstrations in the State's SIP." IERG Obj. at 8. IERG traces this duty to Sections 172 and 182 of the CAA. *Id*, citing 42 U.S.C. 7502, 7511a. IERG argues that, although both sections discuss items that must be included in attainment demonstrations and specific requirements for major sources in nonattainment areas, "neither Section requires any specific action with regard to any sources and/or emission outside a nonattainment area." IERG Obj. at 8. IERG claims that the specific circumstances under which USEPA may impose sanctions under Section 179 of the CAA do not apply to the controls that the Agency seeks to apply to the Contested Sources. *Id*. at 8-9, citing 42 U.S.C. 7509. Without the risk of USEPA sanctions, argues IERG, application of the Agency's proposal to the Contested Sources "is not required by the CAA." IERG Obj. at 8-9. IERG concludes by arguing that the Agency cannot avail itself of fast-track procedures for consideration of this element of its proposal. *Id*. at 9.

IERG discounts the Agency's claim that its entire proposal "must be implemented almost immediately or sanctions may be imposed." IERG. Obj. at 9. IERG notes the Agency's

statement that "[m]oderate nonattainment areas are required to submit attainment demonstrations by June 15, 2007, addressing how the State will achieve the 8-hour ozone standard by the attainment date of June 15, 2009 . . . ." *Id*., citing Statement at 5. IERG further notes the Agency's claim that SIP revisions such as attainment demonstrations for ozone and $PM_{2.5}$ must be fully adopted. IERG Obj. at 9, citing Statement at 3; *see* 42 U.S.C. 7410. Responding to these claims, IERG states that "rulemaking to incorporate a State regulation in SIP may also be initiated when a rule has been proposed by the State but not yet adopted." IERG Obj. at 9, citing 47 F.R. 27073 (June 23, 1982). IERG argues that that USEPA recently restated this interpretation with regard to the Phase II NO_x SIP Call: "[w]e note that State can submit draft plans (i.e., plans that have not completed the final steps in the State administrative process) for parallel processing." IERG Obj. at 9, citing 69 F.R. 21604, 21633. IERG claims that these authorities persuasively demonstrate that, since the Agency has proposed rules regarding the Contested Sources, USEPA would not impose sanctions for failure to adopt the portions of the proposal applying to them. IERG Obj. at 9.

IERG argues that the Agency has not completed the air modeling on which it bases the proposed rules applicable to the Contested Sources. IERG Obj. at 10,citing Statement at 12. IERG discounts the relevance of two documents submitted by the Agency on the issue of air modeling. IERG characterizes the TSD for the CAIR rule as, "at best, only peripherally related to the matters addressed by the Proposed Rules." IERG Obj. at 10; *see* TSD, Attachment 11a. IERG also argues that the Attainment Strategy Options document prepared by LADCO is only a draft document and is nearly 18 months old. IERG Obj. at 10; *see* NO_x Emissions from Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Section 210.146, Parts 211 and 217, R07-18 (April 6, 2007) (TSD Attachment 11b).

IERG acknowledges that TSD Attachment A includes additional modeling information but that it "apparently does not model the impact of the Proposed Rules." IERG Obj. at 10; *see* TSD, Att. A. IERG notes that the TSD Attachment A states that, "with regard to NO_x in relation to the 8-hour ozone standard, '[t]he source region results show that nearby emission generally have the highest impacts.'" IERG Obj. at 10, citing TSD at 67. IERG also notes the statement that "with regard to NO_x in relation to $PM_{2.5}$, '[t]he source region results show that emission from nearby/local sources are large contributors to $PM_{2.5}$ concentrations.'" IERG Obj. at 10, citing TSD at 72. IERG argues that the TSD does not support the Agency's claim that immediate statewide reductions from the Contested Sources are required by air modeling or by the CAA. IERG Obj. at 10. IERG further argues that USEPA guidance for implementing the $PM_{2.5}$ NAAQS has yet to be finalized." IERG Obj. at 11. In the absence of this guidance and complete modeling addressing the proposed rules, IERG contends that "[i]t is difficult to understand how a rule may be 'required to be adopted' by the CAA." *Id*.

IERG also discounts the Agency's claim that "the 'Board has the authority to adopt regulations to avoid sanctions for a failure to meet the requirements of Section 172 of the CAA as it is also contained in Part D of the CAA.'" IERG Obj. at 11, citing Statement at 11; 15% ROP Plan Control Measures for VOM Emissions – Part II Marine Vessel Loading: Amendments to 35 Ill. Adm. Code Parts 211, 218, and 219, R94-15 (Oct. 25, 1994); Visible and Particulate Matter Emissions – Conditional Approval and Clean Up Amendments to 35 Ill. Adm. Code Parts 211 and 212, R96-5 (May 22, 1996). IERG first argues that R94-15 "involved

Section 218 and 219 and, therefore, by definition was not applicable statewide." IERG Obj. at 11. Second, IERG argues that R96-5 stated that, although it applied statewide, its major changes applied to specific and limited areas of the state. *Id*. IERG contends that the authorities cited by the Agency lend no support to a proposed statewide rule affecting the Contested Sources. *Id*.

IERG acknowledges that the Board has applied RACT rules similar to the statewide rules proposed in this proceeding beyond the boundaries of nonattainment areas. IERG Obj. at 12, citing Proposed Amendments to 35 Ill. Adm. Code 215.204, 215.211, and 215.212: Heavy Off-Highway Vehicle Products, R86-36 (June 25, 1987); RACT II Rules, Chapter 2: Air Pollution, R80-5 (May 27, 1982). IERG notes that, in R86-36, the Board stated "that emissions in certain attainment counties can impact on the ozone air quality in adjacent nonattainment counties via the phenomenon of transport. The significance of *the transport phenomenon has been extensively developed in the instant record* . . . ." IERG Obj. at 12 (emphasis in original), citing Proposed Amendments to 35 Ill. Adm. Code 215.204, 215.211, and 215.212: Heavy Off-Highway Vehicle Products, R86-36, slip op. at 37 (June 25, 1987). IERG further notes that, in R80-5, the Board found "*strong logic and evidence in the record of his proceeding of hydrocarbon transport*." IERG Obj. at 12 (emphasis in original); citing RACT II Rules, Chapter 2: Air Pollution, R80-5 (May 27, 1982). Unlike those two matters, IERG argues "there has been no 'extensive' development of the potential for transport of NO_x from Attainment Rea Units into nonattainment areas" and that the record in this proceeding is insufficient to demonstrate that emission reductions at the Contested Sources will affect nonattainment area. IERG Obj. at 12.

NO_x RACT for Large Engines and Turbines at Major Sources in Nonattainment Areas

In the second category of emission units addressed by the Agency's proposal IERG places "units where reductions are needed to comply with NO_x RACT requirements for ozone and $PM_{2.5}$." IERG Obj. at 13, citing Statement at 13. Specifically, IERG characterizes as the affected units in this category as "internal combustion engines and turbines located at major sources in nonattainment areas" (Major Source Nonattainment Area Units). IERG Obj. at 13.

IERG notes the Agency's statement that "States are required to submit SIPs addressing RACT for precursors of ozone, which includes NO_x. Major sources in moderate nonattainment areas are defined as those that have the potential to emit 100 tons or more of NO_x in a nonattainment area." IERG Obj. at 13, citing Statement at 13. IERG argues that

> [t]he federally required nonattainment plan provisions include "the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions *from existing sources in the area* as may be obtained through the *adoption, at a minimum, of reasonably available control technology*) and shall provide for attainment of the national primary ambient air quality standards." IERG Obj. at 13-14 (emphasis in original), citing 42 U.S.C. 7502(c).

IERG argues that, "[w]hile this language in the CAA indicates that NO_x RACT for major sources in nonattainment areas may be required at some point," it does not conclusively determine "whether the USEPA could impose sanctions on the State for failure to impose RACT on the

Major Source Nonattainment Area Units." IERG Obj. at 14. IERG further argues that the Agency "has not properly demonstrated that reductions from the Major Source Nonattainment Area Units would be required by admittedly incomplete air modeling or by the CAA." *Id*. IERG concludes that, to the extent the proposal requires RACT for those units, it is not eligible to proceed under Section 28.5. *Id*.; *see* 415 ILCS 5/28.5 (2004).

Phase II NO_x SIP Call

In the third category of emission units addressed by the Agency's proposal IERG places "units where reductions are needed to comply with the Phase II NO_x SIP Call." IERG Obj. at 14.

IERG notes that USEPA has found that Illinois has failed to submit its Phase II SIP revisions. IERG Obj. at 14, citing 71 F.R. 6347 (Feb. 8, 2006). IERG further notes that "this finding defines the start of a clock for [US]EPA to develop a federal implementation plan (FIP) under section 110(c) of the CAA. IERG Obj. at 14, citing 71 F.R. 6347 (Feb. 8, 2006). IERG expresses doubt as to whether imposition of a FIP constitutes a "sanction" and therefore "does not believe that portions of the Proposed Rule that would affect Phase II NO_x SIP Call Engines may be properly promulgated under Section 28.5." IERG Obj. at 14-15, citing Dynegy Midwest, No. 06-CH-213 (Sangamon County Circuit Court) (May 1, 2006) (Order on Motion for Preliminary Injunction). Based on the position taken by the Pipeline Consortium (*infra* at 3-4), however, IERG states that it "does not oppose the use of Section 28.5 for the promulgation of the portions of the Proposed Rules that affect" those units. IERG Obj. at 15.

Compliance with Procedural Requirements

IERG states that "Section 28.5 includes several procedural requirements that must be followed by the Illinois EPA and the Board for the promulgation of regulations under that Section." IERG Obj. at 15. IERG further states that "[p]ortions of the Proposed Rules and the associated materials fail to conform to the statutory procedural requirements." IERG Obj. at 16. Arguing that "*agency action that is inconsistent with the statute or regulations must be overturned*" (IERG Obj. at 15 (emphasis in original), citing IEPA v. PCB, 219 Ill. App. 3d 975, 977, 759 N.E.2d 1215, 1217 (5th Dist 1991)), IERG claims that specific portions of the proposal must either proceed under Section 27 of the Act or require additional data before proceeding under Section 28.5. *See* IERG Obj. at 16-22; *see also* 415 ILCS 5/27, 28.5 (2004).

Identification of Federal Basis of Rule

IERG states that, when the Agency files a fast-track rulemaking, "[t]he proposal shall *clearly identify the provisions and portions* of the federal statute, regulations, guidance, policy statement, or other documents on which the rule is based." IERG Obj. at 16 (emphasis in original), citing 415 ILCS 5/28.5(e)(3) (2004). IERG notes that the Agency filed its proposal to satisfy the State's obligations under USEPA's NO_x SIP Call and to meet the requirements for RACT, RFP, ROP, and attainment demonstrations for the 8-hour ozone $PM_{2.5}$ NAAQS under the CAA. IERG Obj. at 16, citing Statement at 1-2; 42 U.S.C. 7401 *et seq*. IERG further notes that the Agency's proposal "contains general references to Part D, subparts 1 and 2; Section 172, and Section 182." IERG Obj. at 16, citing Statement at 6; *see* 42 U.S.C. 7502, 7511a.

IERG states that it "does not oppose the proposition that the Phase II NO_x SIP Call is a clearly identified document upon which the portion of the Proposed Rules affecting the Phase II NO_x SIP Call Engines could be based." IERG Obj. at 17. Continuing, IERG states that it "has no opinion on whether the reference to the RACT provisions of the CAA may include enough specificity that the Illinois EPA has clearly identified the provision of the CAA that requires RACT for the Major Source Nonattainment Area Units." *Id*. Concluding, IERG argues that the Agency's general references "to the CAA, and the RFP, ROP, and NAAQS provisions of the CAA, do not *clearly identify the provisions and portions* of the CAA that form the basis of the portions of the Proposed Rules that would affect" the Contested Sources. *Id*.

In support of this claim, IERG states that seven separate provisions of the CAA refer to RFP, 41 separate provisions refer to the NAAQS, and no provision refers to ROP. IERG Obj. at 17. IERG states that the portions of the Agency's proposal affecting the Contested Sources "are clearly not based on every provision or portion of the CAA that references RFP or the NAAQS and must be based on some other document than the CAA with regard to ROP". *Id*. Although IERG acknowledges that it may be possible to determine the Agency's specific bases for its proposal, IERG argues that the Agency has failed in its duty to "*clearly identify the provisions and portions*" of the federal authorities on which the proposal is based. *Id*. (emphasis in original). IERG concludes that "the portions of the Proposed Rules that would affect any units other than the Phase II NO_x SIP Call Engines do not meet the required form of filing for a [Section] 28.5 rulemaking and must be separated from the provisions of the Proposed Rules that would affect the Phase II NO_x SIP Call Engines, and treated as a separate rulemaking under Section 27." IERG Obj. at 18; *see* 415 ILCS 5/27, 28.5(e)(3) (2004).

List of Units

IERG states that, when the Agency files a fast-track rulemaking, the proposal must include "an *identification by classes* of the entities expected to be affected, and *a list of sources expected to be affected by the rules to the extent known to the Agency*." IERG Obj. at 18 (emphasis in original), citing 415 ILCS 5/28.5(e)(8) (2004). IERG notes that the Agency identified 28 engines subject to the NO_x SIP Call and listed them in both the TSD and in the proposed Appendix G to Part 217. IERG Obj. at 18-19; citing TSD at 80-81; Statement, Exh. 9.c. IERG also notes that:

> [o]ther engines that will be affected by this proposal are those that are rated at 500 bhp or greater. There are 1,200 engines rated at or greater than 1,500 bhp, and 175 engines rated between 500 bhp and 1,500 bhp. Of these, *202 of the larger engines are potentially impacted as are 44 of the smaller engines*. Turbines that will be affected are those rated at 3.5 MW or greater. . . . There are 205 turbines rated at 3.5 MW or greater. Of these, 36 are expected to be affected by the rule. IERG Obj. at 19 (emphasis in original), citing TSD at 54-55.

IERG notes that the Agency has listed the 202 larger impacted engines and 36 impacted turbines. IERG Obj. at 19, citing TSD at 83-85.

IERG notes that "[n]either the Proposed Rules nor any of the supporting documents includes a list of the 44 smaller engines that would be affected by the Proposed Rules." IERG Obj. at 19. IERG acknowledges that Section 28.5 only requires these engines to be listed "to the extent known to the Agency." *Id*., citing 415 ILCS 5/28.5(e)(3) (2004). IERG argues, however, that "[t]he definitiveness of the number '44' clearly indicates that the Illinois EPA knows which specific 44 units could be affected." IERG Obj. at 19. IERG concludes that the Agency has failed to meet the filing requirements of Section 28.5(e)(8) and argues that "the portions of the Proposed Rules that may affect these 44 units may not be promulgated under Section 28.5. Such rules must be promulgated under Section 27." IERG Obj. at 19; *see* 415 ILCS 5/27, 28.5 (2004).

IERG claims that "the Illinois EPA's lists of 202 affected engines and 36 affected turbines do not distinguish between engines or turbines that would be Major Source Nonattainment Area Units and those that would be Minor Source Nonattainment Area Units or Attainment Area Units." IERG Obj. at 20. Because the Agency proposes different compliance dates based upon engine size and location, IERG claims that the Agency "should identify the classes of entity that would be expected to be affected by the Proposed Rules with respect to the major/minor source classification and attainment/nonattainment location" for the 202 engines and 36 turbines listed. *Id*. Without that listing, IERG argues that the Board and the potentially affected sources cannot accurately assess the impact of the Agency proposal and that the proposal does not satisfy Section 28.5(e)(8). *Id*.; *see* 415 ILCS 5/28.5(e)(8) (2004).

Summary of Economic Data

IERG states that, when filing a fast-track rulemaking, "[t]he Agency shall file a summary of economic and technical data upon which it relied in drafting the rule." IERG Obj. at 20, citing 415 ILCS 5/28.5(e)(6) (2004). With regard to changes proposed for 35 Ill. Adm. Code 201.146, IERG notes the Agency's estimate that "the Illinois EPA will incur annual costs of approximately $100,000, and affected sources will incur no costs." IERG Obj. at 21, citing Statement, Exh. 5.a. With regard to changes proposed for 35 Ill. Adm. Code 201.111, IERG notes the Agency's estimate that "neither the Illinois EPA nor affected sources will incur any costs due to the proposed changes." IERG Obj. at 21, citing Statement, Exh. 5.b. With regard to changes proposed for 35 Ill. Adm. Code 201.217, IERG notes the Agency's estimate that "Illinois EPA will incur annual costs of approximately $150,000." IERG Obj. at 21, citing Statement, Exh. 5.c. That same estimate states that the total average annual cost of the proposed changes "will be $15,270,000 with an average annual cost per affected emission unit of $855." IERG Obj. at 21, citing Statement, Exh. 5.c.

IERG argues that "the economic data upon which the Illinois EPA relied in drafting the rule is simply incorrect." IERG Obj. at 21. IERG claims that, if the proposed rules affects 28 NO_x SIP Call engines, 202 large engines, 44 smaller engines, and 36 turbines, and if the total average annual cost of the program is $15,270,000, then "the average annual cost to each of the 310 affected units would be $49,258.06. On the other hand, if the Illinois EPA's annual cost estimate of $855 per unit is correct, the total average annual cost of the Proposed Rules should be $265,050." *Id*. Consequently, IERG argues that the Agency has either submitted incorrect economic data or has not filed the actual data on which it relied. *Id*. at 21-22; *see* 415 ILCS 5/28.5(e)(6) (2004). IERG claims that "the Proposed Rules cannot proceed for the Phase II NO_x

SIP Call Engines under Section 28.5 until the Illinois EPA cures the incorrect economic data." IERG Obj. at 22.

AGENCY RESPONSE TO PIPELINE CONSORTIUM

Proposed RACT Requirements

The Agency argues that federal regulations "for 8-hour ozone nonattainment areas require that NO_x RACT be adopted on major sources of NO_x in the nonattainment area pursuant to Section 182(b) and 182(f) of the CAA. Agency Pipeline Resp. at 4, citing 42 U.S.C. 7511a(b), 7511a(f); 40 C.F.R. 51.912. The Agency claims that sources generally consist of several emissions units, and the major source threshold in moderate nonattainment areas is defined as emission of 100 tons per year. Agency Pipeline Resp. at 4, citing TSD at 17. The Agency argues that "NO_x RACT applies to engines rated at 500 bhp or more and turbines rated at 3.5 MW or more that are located in one of Illinois' two 8-hour ozone nonattainment area." Agency Pipeline Resp. at 4.

The Agency further claims that "[f]or each $PM_{2.5}$ nonattainment area, the State shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all reasonable available control measures (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements." Agency Pipeline Resp. at 4, citing 40 C.F.R. 51.1010. The Agency states that it has determined that NO_x RACT is needed to attain the $PM_{2.5}$ NAAQS in Illinois' two nonattainment areas. Agency Pipeline Resp. at 4, citing 42 U.S.C. 7502(c); 40 C.F.R. 51.1010. The Agency further states that it "has evaluated the cost effectiveness of controlling these sources." Agency Pipeline Resp. at 4, citing TSD at 29-44. The Agency argues that "the Proposal properly covers engines rated at 500 bhp or more and turbines rated at 3.5 MW or more that are located in Illinois two $PM_{2.5}$ nonattainment areas." Agency Pipeline Resp. at 4-5.

Proposed RFP Measures

The Agency claims that Illinois must meet federal requirements for RFP in order to demonstrate attainment of the NAAQS for 8-hour ozone and $PM_{2.5}$. Agency Pipeline Resp. at 5, citing 42 U.S.C. 7502(c)(2), 7511a(b)(1), 7511a(c)(2)(C); 40 C.F.R. 51.910, 51.1009. The Agency argues that "Illinois is required to submit a SIP revision that includes measures that ensure RFP toward the emissions reductions targets needed for attainment." Agency Pipeline Resp. at 5. The Agency claims that USEPA modeling performed for CAIR "concluded that the reductions from power plant boilers would not be enough for the Metro-East/St. Louis $PM_{2.5}$ nonattainment area or greater Chicago $PM_{2.5}$ and 8-hour ozone nonattainment areas to achieve the NAAQS by the attainment dates in 2010." Agency Pipeline Resp. at 5; *see* Proposed New Clean Air Interstate Rule (CAIR) SO_2, NO_x Annual and NO_x Ozone Season Trading Programs, 35 Ill. Adm. Code 225, Subparts A, C, D, E, and F, R06-26. The Agency further claims that modeling it performed with LADCO "shows that reductions in NO_x from outside of the nonattainment areas will be necessary to attain the $PM_{2.5}$ NAAQS." Agency Pipeline Resp. at 5, citing TSD at 19-25. The Agency further claims that "reductions of NO_x from inside the nonattainment area, implementation of federal measures, and CAIR, will not be enough for

attainment of the 8-hour ozone NAAQS in the Chicago nonattainment area." Agency Pipeline Resp. at 5-6. The Agency concludes on these bases that "it is appropriate to control sources that have the potential to emit 100 TPY or more of NO_x in both nonattainment and attainment areas of the State." *Id*. at 6.

In support of this conclusion, the Agency states that USEPA "anticipated that states would need to include NO_x emissions reductions from attainment area sources in order [to] demonstrate attainment of the 8-hour ozone and $PM_{2.5}$ NAAQS." Agency Pipeline Resp. at 6. Specifically, the Agency states that USEPA continues to follow a "policy of allowing substitution of VOC from within an 8-hour ozone nonattainment area and NO_x from within a $PM_{2.5}$ nonattainment area with emission reduction from controlling NO_x sources from outside the nonattainment area but within 200 kilometers of the nonattainment area to meet the RFP, and therefore, the attainment demonstration requirement." *Id*, citing 70 Fed. Reg. 71616, 71647; 70 Fed. Reg. 66015; 72 Fed. Reg. 20637-38. The Agency notes that this 200 kilometer range "is essentially the entire State of Illinois." Agency Pipeline Resp. at 6. In addition, the Agency states that the rule implementing the $PM_{2.5}$ NAAQS requires states "to evaluate control of NO_x sources in attainment area unless the state demonstrates that these sources do not significantly contribute to $PM_{2.5}$ concentration in nonattainment area." *Id*. n.1, citing 40 C.F.R. 51.1002(c)(2). The Agency concludes by claiming that, because it has proposed control of NO_x emissions in attainment areas under federal requirements for RFP and attainment, "the rules are federally required." Agency Pipeline Resp. at 6.

SIP Revisions

The Agency claims that federal authorities "require states with 8-hour ozone and $PM_{2.5}$ nonattainment areas to submit attainment demonstrations with fully adopted measures." Agency Pipeline Resp. at 6-7, citing 42 U.S.C. 7502(c), 7511a(b), 40 C.F.R. 51.908, 51.1010. The Agency argues that the final rules implementing the 8-hour ozone and $PM_{2.5}$ NAAQS both "require states to submit SIP revisions containing fully adopted rules for both RACT, RFP, and attainment demonstrations." Agency Pipeline Resp., citing 70 Fed. Reg. 71659 (Nov. 29,2005), 72 Fed. Reg. 20666 (April 25, 2007).

The Agency argues that USEPA under Section 179(a) of the CAA "has the authority to impose sanctions on states for failing to submit any plan or revision or in response to a finding of inadequacy." Agency Pipeline Resp. at 7, citing 42 U.S.C. 7509(a). Noting that Section 179(a) refers to a plan or plan revisions required under "this part," the Agency claims that this refers to Part D. Agency Pipeline Resp. at 8; *see* 42 U.S.C. 7509(a). The Agency further claims that Part D includes "the requirements for RACT, RFP/ROP, and attainment demonstrations, as well as mandatory sanctions." Agency Pipeline Resp. at 8. Noting that Section 179(a)(3)(A) of the CAA refers to state submissions required "under this Act," the Agency claims that this language "includes other implementation plans, including the overall SIP Revision required by Section 110(a) of the CAA or other plan." *Id*., citing 40 C.F.R. 52.31; *see* 42 U.S.C. 7509(a)(3)(A). Specifically, the Agency argues that failing to meet these requirements "could result on the imposition of both highway and offset sanctions" contained in Section 179(b) of the CAA. Agency Pipeline Resp. at 7-8, citing 42 U.S.C. 7509(a), 7509(b).

Imposition of FIP

The Agency dismisses as "irrelevant" the Pipeline Consortium's argument that imposition of a FIP is not a sanction under the CAA. Agency Pipeline Resp. at 9, citing Pipeline Obj. at 7. The Agency states that USEPA has claimed "the authority to impose sanctions on states that fail to address the provisions of the NO_x SIP Call, one of whose requirements is the adoption of provisions to address emission from large stationary reciprocating internal combustion engines." Agency Pipeline Resp. at 9, citing 63 Fed. Reg. 47452 (Oct. 27, 1998). The Agency notes that the state has already received a finding that it had failed to submit a plan. Agency Pipeline Resp. at 9, citing 71 Fed. Reg. 6347 (Feb. 8, 2006). Because USEPA has stated that it will not subject states to mandatory sanctions until 18 months after a finding of a failure to submit, the Agency argues that USEPA has "the authority to impose sanctions – that even the Pipeline Consortium would admit agree the type of sanctions contemplated within the language of Section 28.5 – on or after September 8, 2007." Agency Pipeline Resp. at 9, citing 69 Fed. Reg. 21633 (April 21, 2004). The Agency concludes by arguing that, since Section 28.5 requires only that USEPA have authority to impose sanctions if the proposed rules are not adopted, "the portion of the Illinois EPA's proposal that addresses the emissions from large reciprocating internal combustion engines is properly submitted [] under Section 28.5 of the Act as a federally required rule that would subject the State to sanctions by USEPA if the rule is not adopted." Agency Pipeline Resp. at 10; *see* 415 ILCS 5/28.5 (2004).

The Agency dismisses as untrue the Pipeline Consortium's allegation "that regulations proposed to meet the federal NO_x RACT, rate-of-progress, and attainment demonstrations for the 8-hour ozone NAAQS are not federally required because there is no federal requirement that engines and turbines be controlled." Agency Pipeline Resp. at 10. Within nonattainment area, the Agency claims that federal authorities require adoption of RACT. *Id*., citing 42 U.S.C. 7511a(b), 7511a(f); 40 C.F.R. 51.911, 51.1010. Outside nonattainment areas, the Agency claims that "states must evaluate control of NO_x sources in attainment areas unless the state demonstrates that these sources do not significantly contribute to $PM_{2.5}$ concentrations in nonattainment areas." Agency Pipeline Resp. at 10, citing 40 C.F.R. 51.1002(c)(2). The Agency reiterates that USEPA modeling performed for CAIR concluded that reductions from utility boilers would not be sufficient to achieve the $PM_{2.5}$ NAAQS in the Metro-East/St. Louis or Chicago nonattainment areas. Agency Pipeline Resp. at 11; *see* Proposed New Clean Air Interstate Rule (CAIR) SO_2, NO_x Annual and NO_x Ozone Season Trading Programs, 35 Ill. Adm. Code 225, Subparts A, C, D, E, and F, R06-26. The Agency also restates that its own preliminary modeling showed that NO_x reductions from outside of the nonattainment areas will be necessary to attain the $PM_{2.5}$ NAAQS." Agency Pipeline Resp. at 11. The Agency concludes that it "is federally required to evaluate controlling these sources." *Id*.

The Agency states that "Part D of the CAA contains the requirements for RFP, RACT, and attainment demonstrations." Agency Pipeline Resp. at 11. The Agency restates its argument that "USEPA has the authority to impose mandatory sanctions for a state's failure to complete a SIP or SIP revision as required by Part D" and suggests that the entire scope of the proposal is properly submitted under Section 28.5. *Id*.; *see* 415 ILCS 5/28.5 (2004).

Factual Issues

The Agency states that the Pipeline Consortium has made a number of factual claims with regard to the proposal. Agency Pipeline Resp. at 8, 11, citing Pipeline Obj. at 5-7. The Agency states that these claims "and other factual questions regarding the content and impact of the Proposal are best addressed at hearing where witnesses can be cross examined." Agency Pipeline Resp. at 8-9. The Agency suggests that, since it has demonstrated that its proposal is a federally required rule, the Pipeline Consortium's factual claims are not relevant to determining whether the Board should proceed under Section 28.5. *See id*.

Economic Impact Study

The Agency disputes the Pipeline Consortium's claim that Section 28.5 eliminates the Board's responsibility to obtain an economic impact study. Agency Pipeline Resp. at 12, citing Pipeline Obj. at 9. The Agency argues that the general rulemaking provision of the Act "simply requires that the Board request that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study of the rule." Agency Pipeline Resp. at 12; *see* 415 ILCS 5/27(b)(1) (2004). The Agency argues that, since DCEO may decline the Board's request, proceeding under the Section 27 would not necessarily result in the performance of a study. Agency Pipeline Resp. at 12. The Agency further argues that it has provided economic data on its proposed rules and that the Pipeline Consortium may address that issue during the hearings. *Id*. at 12-13.

AGENCY RESPONSE TO IERG

The Agency dismisses IERG's objection to the Agency's position that the proposed rules addressing RACT, RFP, and attainment demonstrations are federally required rules and its position that failure to adopt those rules would expose the state to the type USEPA sanctions contemplated by Section 28.5 of the Act. Agency IERG Resp. at 9; *see* 415 ILCS 5/28.5 (2004). The Agency characterizes these objections as "wholly without substance" and states that they "fail to acknowledge relevant statutory and regulatory authority." Agency IERG Resp. at 9.

Phase II NO_x SIP Call

The Agency states that "[t]he NO_x SIP Call Phase II required the named states to address NO_x emissions from large stationary reciprocating internal combustion engines." Agency IERG Resp. at 11. The Agency further states that Illinois received notice from USEPA on October 13, 2005 that the State "had failed to make the necessary implementation plan submission." *Id*., citing Statement, Att. B (letter from USEPA Regional Administrator). Since Illinois did not make the required submission within 18 months, argues the Agency, "USEPA has the authority to impose sanctions listed in Section 179(b) of the CAA." Agency IERG Resp. at 11; *see* 42 U.S.C. 7509(b) (listing available sanctions).

While the Agency acknowledges that the USEPA notice refers only to the imposition of a FIP, the Agency argues that "this does not preclude USEPA's authority under Section 179 of the CAA to impose sanctions because Illinois has failed to respond to within the statutory timeframe to USEPA's finding pursuant to Section 11(k)(5) of the CAA." Agency IERG Resp. at 11; *see* 42 U.S.C. 7410(k)(5), 7509. The Agency notes USEPA's statement that "it has the authority to impose sanctions on states that fail to address the provisions of the NO_x SIP Call, one of whose requirements is the adoption of provisions to address emissions from large stationary reciprocating internal combustion engines." Agency IERG Resp. at 11, citing 63 Fed. Reg. 47452 (Oct. 27, 1998). The Agency further notes that USEPA has reaffirmed this authority with regard to Phase II of the NO_x SIP Call. Agency IERG Resp. at 11, citing 69 Fed. Reg. 21633 (April 21, 2004).

The Agency claims that, since Illinois received a finding of failure to submit a plan on February 8, 2006, "USEPA would thus have the authority to impose sanctions – that even IERG would admit are the type of sanctions contemplated within the language of Section 28.5 – on or after September 8, 2007." Agency IERG Resp. at 12. Although the Agency notes language indicating that it could submit a rule that has not been fully adopted for parallel processing, the Agency claims that this does not determine whether a rule is federally required or whether USEPA would use its authority to impose mandatory sanctions. *Id*., citing IERG Obj. at 9. The Agency also argues that Section 28.5 requires only the USEPA have authority to impose sanctions if the proposed rules are not adopted and does not require that USEPA have already imposed sanction. Agency IERG Resp. at 12; *see* 415 ILCS 5/28.5 (2004). Consequently, the Agency concludes that its proposal "is properly submitted pursuant to Section 28.5 of the Act as a federally required rule that could subject the State to sanctions by USEPA if the rule is not adopted." Agency IERG Resp. at 12.

NO_x RACT

The Agency disputes as untrue IERG's claim that proposed NO_x RACT regulations are not federally required because there is no federal requirement to control engines and turbines. Agency IERG Resp. at 12. The Agency argues that "[f]ederal requirements for 8-hour ozone nonattainment area require that NO_x RACT be adopted on major sources of NO_x in the nonattainment area pursuant to Section 182(b) and 182(f) of the CAA." Agency IERG Resp. at 13, citing 42 U.S.C. 7511a(b), 7511a(f); 40 C.F.R. 51.912. In this proposal, therefore, the Agency states that it applies NO_x RACT to engines rated at 500 bhp or more and turbines rated at 3.5 MW or more that are located in one of Illinois' two 8-hour ozone nonattainment areas. Agency IERG Resp. at 13.

With regard to $PM_{2.5}$ nonattainment areas, the Agency argues that the final implementation rule requires states to adopt RACT as necessary to demonstrate attainment. Agency IERG Resp. at 13, citing 40 C.F.R. 51.1010. The Agency further argues that it "has determined that NO_x RACT is necessary for its two $PM_{2.5}$ nonattainment area to attain the NAAQS pursuant to Section 172(c) of the CAA and 40 C.F.R. 51.101 and has evaluated the cost effectiveness of controlling those sources. Agency IERG Resp. at 13, citing 42 U.S.C. 7502(c); TSD at 29-44. The Agency states that its proposal "properly covers engines rated at 500 bhp or more and turbines rated at 3.5 MW or more that are located in Illinois two $PM_{2.5}$ nonattainment area." Agency IERG Resp. at 14.

Proposed RFP Measures

The Agency argues that federal authorities "require that states meet RFP to demonstrate attainment for 8-hour ozone and $PM_{2.5}$ NAAQS." Agency IERG Resp. at 14, citing 42 U.S.C. 7502(c)(2), 7511a(b)(1), 7511a(c)(2)(C), 40 C.F.R. 51.910, 51.1009. The Agency further argues that Illinois must "submit a SIP revision that includes measures that ensure RFP towards the emissions reductions targets need for attainment." Agency IERG Resp. at 14, citing 40 C.F.R. 51.910. Specifically, the Agency states that "[t]he SIP revisions for $PM_{2.5}$ are due April 2008." Agency IERG Resp. at 14.

The Agency restates its claim that USEPA modeling performed for CAIR "concluded that the reductions from power plant boilers would not be enough for the Metro-East/St. Louis $PM_{2.5}$ nonattainment area or greater Chicago $PM_{2.5}$ and 8-hour ozone nonattainment areas to achieve the NAAQS by the attainment dates in 2010." Agency IERG Resp. at 14; *see* Proposed New Clean Air Interstate Rule (CAIR) SO_2, NO_x Annual and NO_x Ozone Season Trading Programs, 35 Ill. Adm. Code 225, Subparts A, C, D, E, and F, R06-26. The Agency also restates its claim that modeling it performed with LADCO "shows that reductions in NO_x from outside of the nonattainment areas will be necessary to attain the $PM_{2.5}$ NAAQS." Agency IERG Resp. at 14, citing TSD at 19-25. The Agency further repeats its claim that "reductions of NO_x from inside the nonattainment area, implementation of federal measures, and CAIR, will not be enough for attainment of the 8-hour ozone NAAQS in the Chicago nonattainment area." Agency IERG Resp. at 14-15. The Agency concludes on these bases that "it is appropriate to control sources that have the potential to emit 100 TPY or more of NO_x in both nonattainment and attainment areas of the State." *Id*. at 15.

In support of this conclusion, the Agency repeats its statement that USEPA "anticipated that states would need to include NO_x emissions reductions from attainment area sources in order [to] demonstrate attainment of the 8-hour ozone and $PM_{2.5}$ NAAQS." Agency IERG Resp. at 15. Specifically, the Agency restates that USEPA continues to follow a "policy of allowing substitution of VOC from within an 8-hour ozone nonattainment area and NO_x from within a $PM_{2.5}$ nonattainment area with emission reductions from controlling NO_x sources from outside the nonattainment area but within 200 kilometers of the nonattainment area to meet the RFP, and therefore, the attainment demonstration requirement." *Id*, citing 70 Fed. Reg. 71616, 71647; 70 Fed. Reg. 66015; 72 Fed. Reg. 20637-38. The Agency again notes that this 200 kilometer range "is essentially the entire State of Illinois." Agency IERG Resp. at 15. In addition, the Agency restates that the final rule implementing the $PM_{2.5}$ NAAQS requires states "to evaluate control of NO_x sources in attainment areas unless the state demonstrates that these sources do not significantly contribute to $PM_{2.5}$ concentration in nonattainment areas." *Id*. n.4, citing 40 C.F.R. 51.1002(c)(2). The Agency concludes by claiming that, because it has proposed control of NO_x emissions in attainment areas under federal requirements for RFP and attainment, "the rules are federally required." Agency IERG Resp. at 15.

SIP Revisions

The Agency argues that federal authorities "require states with 8-hour ozone and $PM_{2.5}$ nonattainment area to submit attainment demonstrations with fully adopted measures." Agency IERG Resp. at 15-16, citing 42 U.S.C. 7502(c), 7511a(b); 40 C.F.R. 51.908, 51.1010. The Agency claims that, in support of its argument "that USEPA would not exercise its authority to impose mandatory sanctions for failing to adopt RACT, RFP, and attainment demonstrations," IERG "cites guidance that is more than 20 years old." Agency IERG Resp. at 16, citing IERG Obj. at 9. The Agency argues that that guidance does not appear to require full adoption at the time a state submits a SIP in order to meet NAAQS requirements. Agency IERG Resp. at 16. The Agency notes that IERG also cites the NO_x SIP Call Phase II for this proposition, although the Agency claims that USEPA in that case allowed only 12 months for adoption of a rule. *Id*., citing 69 Fed. Reg. 21633. In this case, stresses the Agency, "states have been given at least 27 months for adopting measures meeting the requirements for RACT, RFP, and attainment demonstrations." Agency IERG Resp. at 16.

The Agency argues that "USEPA's final implementation rules for both 8-hour ozone (2005) and $PM_{2.5}$ (proposed and final (2007)) require states to submit SIP revisions containing fully adopted rules for both RACT, RFP, and attainment demonstrations. Agency IERG Resp. at 16, citing 40 C.F.R. 51.908, 51.1010; 70 Fed. Reg. 71659 (Nov. 29, 2005), 72 Fed. Reg. 20666 (April 25, 2007). The Agency claims that "IERG is incorrect in arguing that USEPA will only impose sanctions if USEPA has already found that the SIP was inadequate." Agency IERG Resp. at 17. The Agency insists that, "if Illinois fails to submit SIPs addressing RACT, RFP, or the attainment demonstration without fully adopted measures, USEPA will have the authority to impose sanctions." *Id*.

Scope of Agency Proposal

The Agency disputes IERG's claim that "section 28.5 of the Act does not apply to regulations that affect units or types of sources not specifically required to be controlled by the CAA or have a statewide effect." Agency IERG Resp. at 7-8. The Agency responds by stating that the Board has acted under Section 28.5 to adopt "regulations controlling emissions from source types not specifically required by the CAA." *Id* at 8. The Agency claims that, in R94-15, the Board adopted the Agency's proposal for marine vessel loading solely for the purpose of meeting the 15 percent requirements of the CAA when neither the CAA nor any RACT guideline required Illinois to control emissions from the source. *Id*.; *see* 15% ROP Plan Control Measures – Part II: Marine Vessel Loading: Amendments to 35 Ill. Adm. Code 211, 218, and 219, R94-15. The Agency further claims that the Board has properly used Section 28.5 to promulgate other federally required rules applying statewide, including sources located in attainment area. Agency IERG Resp. at 8, citing Proposed New 35 Ill. Adm. Code 217, Subpart T, Cement Kilns, and Amendment to 35 Ill. Adm. Code 211 and 217, R01-11; Municipal Solid Waste Landfills – Non-Methane Organic Compounds 35 Ill. Adm. Code 201.103, 201.146 and Part 220, R98-28.

Compliance with Procedural Requirements

Noting IERG's objection that its proposal does not satisfy the requirements of Section 28.5, the Agency claims that IERG has assumed "that the Board has a broader scope of review in deciding whether to accept a "fast-track" rulemaking proposal than is actually conferred by Section 28.5." Agency IERG Resp. at 2; *see* 415 ILCS 5/28.5 (2004). Citing a 1992 Board resolution, the Agency argues that "[t]he Board has made clear its position that its review of a proposal filed pursuant to Section 28.5 of the Act is limited to determining whether all items found on the checklist in Section 28.5 are present." Agency IERG Resp. at 3, citing Clean Air Act Rulemaking Procedures Pursuant to Section 28.5 of the Environmental Protection Act, as Added by P.A. 87-1213, RES 92-2 (Oct. 29, 1992). The Agency further argues that, in its more recent adoption of procedural rules, the Board "did nothing to question the view of [its] authority described in Resolution 92-2." Agency IERG Resp. at 3, citing Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20. The Agency claims that the Hearing Officer Order dated April 20, 2007 assessed that "the proposal met the regulatory and statutory checklist for proceeding under Section 28.5 of the Act." Agency IERG Resp. at 3-4, citing 415 ILCS 5/28.5(e) (2004); 35 Ill. Adm. Code 102.302(a).

The Agency argues that it has satisfied the its procedural requirements under Section 28.5 of the Act and continues by addressing IERG's claims that that the statutory basis for the proposal is not clearly identified, that the list of affected units has not been specified, and that the economic data submitted was incorrect. *See* IERG Obj. at 15-22.

Identification of Federal Basis of Rule

The Agency argues that neither Section 28.5 nor the Board's procedural rules requires that the legal basis for the proposed rules must be contained in the statement of reasons and that the basis need be included within the proposal. Agency IERG Resp. at 4. The Agency further argues that "[i]nformation within the TSD should be read in concert with the information found within the S[tatement] o[f] R[easons], as both documents are components of the overall

Proposal." *Id*. The Agency claims that such a reading shows that it has provided the references required by Section 28.5(e)(3). *Id*.; *see* 415 ILCS 5/28.5(e)(3) (2004).

With respect to RACT, the Agency claims that the TSD states that RACT for ozone nonattainment areas is implemented under Section 182(b)(2) and 182 (f) of the CAA. Agency IERG Resp. at 4-5, citing 42 U.S.C. 7511a(b)(2), 7511a(f). The Agency further claims that the submission date for its proposal complies with 40 C.F.R. 51.912. The Agency also states that the TSD refers to an ozone guidance document at 70 Fed. Reg. 71612. IERG Resp. at 5, *see* TSD At 64.

With regard to $PM_{2.5}$ nonattainment, the Agency claims that states with such areas "must address NO_x RACT requirements." Agency IERG Reps. at 5. The Agency further claims that "[t]he TSD indicates that the authority and obligation arise from Section 172 of the CAA . . . ." *Id*., citing TSD At 18. The Agency also claims that the TSD indicates that the proposal is also based upon the $PM_{2.5}$ implementation rule, which was not final on the date it submitted the proposal. Agency IERG Resp. at 5, citing TSD at 18. The Agency states, however, that USEPA published the final implementation rule on April 27, 2007. Agency IERG Resp. at 5 n.2, citing 72 Fed. Reg. 20589.

With regard to 8–hour ozone RFP/ROP requirements, the Agency states that the TSD refers to specific authorities including Sections 172(c)(2) and 182(c)(2)(C) of the CAA and 40 C.F.R. 51.910. Agency IERG Resp. at 5, citing 42 U.S.C. 7502(c)(2), 7511a(c)(2)(C); 40 C.F.R. 51.910; TSD at 18. With regard to $PM_{2.5}$ RFP requirements, the Agency states that it used a general reference to Section 172 of the CAA. Agency IERG Resp. at 5, citing 42 U.S.C. 7502. The Agency further states this it is necessary to control units in attainment areas in order to meet this requirement. Agency IERG Resp. at 5, citing 70 Fed. Reg. 66015; 70 Fed. Reg. 71616, 71647; 72 Fed. Reg. 20637-38.

With regard to attainment demonstration for 8-hour ozone and $PM_{2.5}$ NAAQS, the Agency states that it provided "general statutory references to Sections 110, 172, and 182 of the CAA." Agency IERG Resp. at 5, citing 42 U.S.C. 7410, 7502, 7511a. The Agency also cites "more particular reference." Agency IERG Resp, at 5, citing 42 U.S.C. 7511a(b), 7511a(j); 40 C.F.R. 51.908. For $PM_{2.5}$, the Agency refers specifically to additional authorities. Agency IERG Resp. at 5-6, citing 42 U.S.C. 7502(c), 40 C.F.R. 51.1007. The Agency also argues that "[t]he TSD provides extensive analysis of the need for intrastate reduction of NO_x for attainment of both the 8-hour ozone and $PM_{2.5}$ NAAQS." Agency IERG Resp. at 5-6, citing TSD at 19-25.

List of Units

In response to IERG's objection that it failed adequately to list to the extent known those sources expected to be affected by the rule, the Agency states that the TSD lists more than 200 engines and turbines known as potentially affected units. Agency IERG Resp. at 6, citing TSD at 80-86; *see* 415 ILCS 5/28,5(e)(8) (2004). The Agency states that, because engines less than 1,500 bhp do not now require permits to operate and its NO_x emissions inventory does not now include all engines of this size, CEO conducted a survey of 10,025 businesses. Agency IERG Resp. at 6. On the basis of the results of that survey, the Agency reports that it 175 emission

units may be affected but that many would qualify for exemptions. *Id*. The Agency reports that it thus reduced the estimated number of units to approximately 44 engines sized from 500 bhp to 1,5000 bhp. *Id*. The Agency concludes that this estimate satisfies the requirements of Section 28.5(e)(8) by listing affected sources to the extent known. *Id*.; *see* 415 ILCS 5/28.5(e)(8) (2004). The Agency argues that "[q]uestions pertaining to the mere use of '44' as a number, and Illinois EPA's methodology, are best left for hearing," do not prevent the Board from considering the proposal under Section 28.5. Agency IERG Resp. at 6.

Summary of Economic Data

The Agency disputes IERG's claim that it has not filed a sufficient summary of the economic data upon which it relied in drafting the rule by noting that it provided extensive data of this nature in its TSD. Agency IERG Resp. at 7; *see* 415 ILCS 5/28.5(e)(6) (2004); TSD at 37-44 (Cost Effectiveness of Controls). However, the Agency acknowledges that there was an error in its Economic and Budgetary Form. *Id*. The Agency states that, where it has indicted an *average annual cost per emission unit* of $855, it should have indicated a cost of $855 *per ton of NO_x reduced annually*. *Id*. (emphasis in original). The Agency states that it reports costs on the basis of tons reduced "because of the differences in sizes of units and the amount of time per year different units are utilized." *Id*. The Agency characterizes this error as a minor one that should not prevent the Board from considering the proposal under Section 28.5. *Id*.; *see* 415 ILCS 5/28.5 (2004).

The Agency also notes IERG's argument "that it is premature to propose controls before the modeling is complete." Agency IERG Resp. at 7, citing IERG Obj. at 7. The Agency suggests that this claim is not relevant "to whether the Illinois EPA has provided the technical information that the draft rules are based [upon] or whether the rules are federally required." Agency IERG Resp. at 7. The Agency argues that issues related to modeling should be addressed at hearing by questioning the Agency's witnesses. *Id*.

Opportunities for Public Comment

The Agency disputes IERG's assertions that, when the Board follows the procedures of Section 28.5, it is "bypassing the deliberative proceedings of a regular rulemaking" and providing "less meaningful opportunities for public comment on the proposed rulemaking." Agency IERG Resp. at 8; *see* 415 ILCS 5/28.5 (2004). The Agency claims that the General Assembly adopted Section 28.5 in response to a report "addressing reservations by USEPA about Illinois' capacity to comply with the strict time frames under the CAA." Agency IERG Resp. at 8, citing *Report of the Attorney General's Task Force of Environmental Resources 1992* at 30. The Agency states that Section 28.5 alleviates these concerns by providing a series of stringent rulemaking deadlines. Agency IERG Resp. at 8-9. The Agency argues that these stringent deadlines are inherent in a Section 28.5 proceeding and are irrelevant in determining whether this proposal should proceed under Section 28.5. *Id*. at 9. The Agency further argues that the procedures of Section 27 do not eliminate the possibility of expedited rulemakings. *Id*.; *see* 415 ILCS 5/27 (2004).

PIPELINE CONSORTIUM'S REPLY

The Pipeline Consortium reiterates its position that the Board cannot properly consider Sections 217.392(a)(3) and (4) of the proposed rules under Section 28.5 of the Act. Pipeline Reply at 1; *see* 415 ILCS 5/28.5 (2004). The Pipeline Consortium argues that the Board can proceed under Section 28.5 only when USEPA "may impose sanctions for the state's failure to adopt a federally-required *rule*. Pipeline Reply at 1 (emphasis in original). The Pipeline Consortium elaborates by stating that

> Section 28.5 does not confer jurisdiction when USEPA may impose sanctions for the state's failure to make a federally-required submittal that is something other than a rule, such as an attainment demonstration or plan for reasonable further progress ("RFP") or rate of progress ("ROP") or monitoring deployment plan or any of a number of other components of the state implementation plan ("SIP") that are not rules. *Id*. at 1-2.

Attainment Demonstrations

The Pipeline Consortium argues that the Agency has failed to satisfy the Board's procedural rules, which require that the Agency submit various legal, technical and economic support with its rulemaking proposal. Pipeline Reply at 3; *see* 35 Ill. Adm. Code 102.302. The Pipeline Consortium states that the Agency has provided "no support" for its claim that it is necessary to include attainment area sources for attainment demonstrations. Pipeline Reply at 3. The Pipeline Consortium argues that, because the Agency has provided no "overall description of the mix of sources that will be included in the attainment demonstrations," the Board lacks any factual basis on which to determine that including the attainment area sources in the attainment demonstration is necessary or appropriate. *Id*.

The Pipeline Consortium dismisses the Agency's view "that this is an issue of fact that is properly addressed at hearing and is not necessary for inclusion in the initial submittal." Pipeline Reply at 3. The Pipeline Consortium argues that, when the Agency proposes a rule under Section 28.5, it must initially submit information sufficient to resolve factual issues relating to the Board's jurisdiction under that section. *Id*. "If it cannot, then the Board lacks jurisdiction under [Section] 28.5." *Id*. Because the Agency has not identified any Congressional or USEPA authority requiring the regulation of attainment area sources, the Pipeline Consortium argues that including those sources in an attainment demonstration "requires a far more complete initial submittal with an adequate justification for [Section] 28.5 jurisdiction." *Id*. Arguing that the Agency has failed to provide that justification, the Pipeline Consortium claims that the Board has "no jurisdiction to proceed with the rules as it pertains to the attainment area sources, because the rule is not federally required and USEPA cannot impose sanctions if the Board fails to adopt it." *Id*. at 4.

The Pipeline Consortium acknowledges that "an attainment demonstration SIP is federally required, and USEPA can impose sanction on the state if the Agency does not submit an approvable attainment demonstration." Pipeline Reply at 4, citing 42 U.S.C. 7410, 7509. The Pipeline Consortium argues, however, that the specific rules comprising an attainment

demonstration cannot be described as federally required "unless and until the attainment demonstration is approved as part of Illinois' SIP." *Id*. The Pipeline Consortium further argues that USEPA can only impose sanctions for failing to submit an approvable attainment demonstration and "cannot ever impose sanctions for the state's failure to adopt any rule component of an attainment demonstration SIP if those rules are not specifically identified and required by Congress or USEPA." *Id*. at 4-5, citing 42 U.S.C. 7509. Consequently, the Pipeline Consortium claims that the portion of the Agency's proposal regulating sources in attainment areas is not federally required and is not subject to USEPA sanctions, leaving the Board without jurisdiction to consider that portion of the rule under Section 28.5. Pipeline Reply at 5. The Pipeline Consortium thus argues that the Board must sever Sections 217.392(a)(3) and (4) and related language from the remainder of the proposal. *Id*. at 4, 5.

RFP/ROP

The Pipeline Consortium notes the Agency's claims that it must regulate sources in attainment areas in order to demonstrate RFP and ROP and that such regulations would be approvable under federal guidance. Pipeline Reply at 5. The Pipeline Consortium responds, however, that "the federal requirements are (1) that the state *consider* attainment area regulation and (2) that it *justify* reliance on attainment area regulation if it chooses to rely on attainment area regulation in its RFP/ROP." *Id*. (emphasis in original), citing 72 Fed. Reg. 20586, 20636-39 (April 25, 2007). The Pipeline Consortium claims that the Agency has failed to describe how it complies with these factors. Pipeline Reply at 5. The Pipeline Consortium further argues that, even if the Agency had complied with those factors, that compliance would not itself give the Board jurisdiction to consider the proposed rules under Section 28.5. *Id*.

The Pipeline Consortium claims that the Agency cannot rely upon RFP/ROP with regard to the Chicago area for ozone "because the area attains the ozone standard." Pipeline Reply at 5 (citations omitted). The Pipeline Consortium expresses doubt that the Agency can justify regulation of sources in attainment areas that are not upwind of the Metro-East/St. Louis ozone nonattainment area. *Id*. at 6. The Pipeline Consortium further argues that "the Agency did not include in its submittal any discussion of the impact of attainment area sources all over the state on the Metro-East/St. Louis ozone nonattainment area. *Id*.

With regard to $PM_{2.5}$ implementation, the Pipeline Consortium argues that the final rule "requires that a state specifically justify the inclusion of attainment area sources in an RFP submittal." Pipeline Reply at 6. The Pipeline Consortium claims that the Agency only submitted as justification admittedly preliminary modeling performed by LADCO. *Id*., *see* TSD at 65-78. The Pipeline Consortium further claims that the TSD includes regional modeling that "does not focus on Illinois sources, let alone attainment area sources and, therefore, is insufficient justification for inclusion of the attainment area sources for RFP." *Id*.

The Pipeline Consortium suggests that, even if the Agency had justified including attainment area sources in the RFP demonstration, "it is not possible for a rule intended to satisfy an RFP plan requirement to proceed under [Section] 28.5. Pipeline Reply at 6. The Pipeline Consortium argues that the rule does not become federally required until USEPA approves the RFP plan. *Id*. at 6-7. The Pipeline Consortium further argues that it is only the failure to adopt

an RFP plans that may lead to sanctions and not the failure to adopt a rule that may be an element of an RFP plan. *Id*. at 7.

As it had claimed with regard to an attainment demonstration SIP, the Pipeline Consortium argues that, "[u]ntil and unless USEPA has approved the RFP plan submittal as a part of an SIP, the rules included in the RFP plan are not federally required." Pipeline Reply at 7. The Pipeline Consortium further argues that "USEPA cannot impose sanctions for a state's failure to include a rule not specifically required by Congress or USEPA." *Id*., citing 42 U.S.C. 7410, 7509.

The Pipeline Consortium states that "[w]ith respect to the ozone and $PM_{2.5}$ NAAQS, USEPA has not required that any specific attainment area sources be controlled other than those identified in Phase II of the NO_x SIP Call and in the CAIR." Pipeline Reply at 7. The Pipeline Consortium argues that the $PM_{2.5}$ implementation rule requires that states consider sources in attainment areas but does not require that *any* attainment sources be regulated. *Id*., citing 72 Fed. Reg. 20586, 20636 (April 25, 2007). Arguing that the portions of the rule that apply to attainment area sources are neither federally required nor include the risk of sanctions, the Pipeline Consortium suggest that the Board lacks jurisdiction to consider them under Section 28.5. *Id*.

Additional Agency Arguments

First, the Pipeline Consortium discounts the Agency's claim that "the Board has accepted other rules intended as parts of RFP/ROP plans or attainment demonstrations without the Agency including in its initial submittal sufficient support." Pipeline Reply at 8. The Pipeline Consortium suggests that this claim does not relieve the Board of its responsibility to ensure that this proposal is sufficient and that it can be considered under Section 28.5. *Id*.

The Pipeline Consortium questions the Agency's reliance on its Technical Support Document and the significance of its Statement of Reasons. *See* Pipeline Reply at 8-9. Although acknowledging that legal and technical arguments may necessarily overlap, the Pipeline Consortium expresses doubt about the weight the Agency has placed on its TSD and about the relevance of its Statement of Reasons. *Id*. at 9.

Finally, the Pipeline Consortium dismisses the Agency's complaint "that the federal clock is ticking with respect to the requirement that this rule be adopted." Pipeline Reply at 9. Noting that USEPA finalized Phase II of the NO_x SIP Call in 2005 and that the Agency last met with interested parties about this proposal more than one year ago, the Pipeline suggest that the Agency's time constraints are self-created. *See id*. While it acknowledges that a federal enforcement clock is ticking with regard to the Phase II NO_x SIP Call portion of the proposal, the Pipeline Consortium claims that "[t]here is plenty of time for a Section 27 rulemaking, particularly with respect to the attainment area sources." *Id*.; *see* 415 ILCS 5/27 (2004).

IERG'S REPLY

IERG incorporates by reference and reiterates its objection to the use of fast-track procedures in the consideration of this proposed rule, with the exception of that portion of the proposal addressing sources that are affected by Phase II of the NO_x SIP Call. IERG Reply at 1, n.1.

Procedural Requirements

Board Authority

IERG argues that the Agency has ignored a recent Board holding regarding the Board's ability to review rulemaking proposals filed under Section 28.5. IERG Reply at 1-2. IERG notes the Agency's claim that "the Board may only make a cursory examination of a proposal under Section 28.5 to determine if the items listed in a 'statutory checklist' found in Section 28.5(e) have been included in the proposal." *Id*. at 2, citing Agency IERG Resp. at 2-4. IERG stresses the Board's recent statement that, "[w]hen the Agency argues that the Board's review of this proposal [under Section 28.5] is limited to technical or procedural issues, it disregards well-settled case law providing an agency has authority to determine whether it has jurisdiction over a proceeding." IERG Reply at 2-3, citing Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury), R06-25, slip op. at 14 (April 20, 2006). IERG further stresses the Board's recent finding that "the language of the Act and case law clearly authorize the Board to consider whether or not a proposal filed pursuant to Section 28.5 may proceed under that provision." IERG Reply at 3, citing Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury), R06-25, slip op. at 15 (April 20, 2006). IERG characterizes the Agency's position on this issue as "simply incorrect." IERG Reply at 3.

Identification of Federal Basis of Rule

IERG states that the Agency's response identifies references in the TSD to provisions of the CAA and regulations but argues that "the 'references' are merely generalizations that certain provisions of the CAA require general emission reductions." IERG Reply at 3. IERG claims that, "[w]ith the possible exception of the Phase II NO_x SIP Call Engines, the Illinois EPA has failed to 'clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents *upon which the rule* is based.'" *Id*. (emphasis in original), citing 415 ILCS 5/28.5(e)(3) (2004). IERG concludes that [g]eneral references to portions of the CAA that require a state implementation plan or reasonable further progress do not provide a basis for *the Proposed Rule*. IERG Reply at 3 (emphasis in original).

List of Units

IERG notes the Agency's response that "a portion of the Proposed Rule would be applicable to *approximately 44 engines*." IERG Reply at 4, citing Agency IERG Resp. at 6. IERG notes that the Agency reached this conclusion on the basis of a survey of 10,025 businesses and that "some number of responses must have included information on engines that would be affected by the Proposed Rule, or the Illinois EPA would have been unable to make any extrapolation at all." IERG Reply at 4. IERG decries the Agency's claim that questions

about the estimate that a portion of the proposed rule would apply to approximately 44 engines should be deferred to the hearings. *See id*. IERG characterizes this as a claim that the Board may not look into the accuracy of the Agency's proposal until the hearing. *Id*. at 4-5.

Summary of Economic Data

IERG notes that the Agency has conceded making and has corrected a minor error in summarizing the economic and technical data on which it relied in drafting the rule. IERG Reply at 6. IERG claims, however, that it finds no legal support for the suggestion that Section 28.5 allows "minor" exceptions from its specific requirements. *Id*. In addition, IERG notes that the Agency's corrected reference to the annual cost of reducing a ton of NO_x emissions does not squarely respond to a question requesting the "[e]conomic effect on *persons* affected by the rulemaking." *Id*. at 7 (emphasis in original). Consequently, IERG argues that "[i]t is impossible to assess the impact of the Proposed Rules when the cost per person has not been supplied." *Id*. IERG also argues that, because the overall projected cost and the annual cost of reducing a ton of NO_x emissions do not appear in the TSD, "the economic data on which the Illinois EPA relied in drafting the Proposed Rule is inadequate." *Id*.

Regulatory Analysis

IERG notes that the Agency's survey of businesses that may be affected by the proposed rules includes businesses with engines less than 1,500 bhp because those engines do not require operating permits. IERG Reply at 5, *see* Agency IERG Resp. at 6. IERG assumes that many of these sources are small businesses. IERG Reply at 5.

IERG notes that, under Section 28.5, the Agency must file its proposal "in a form that meets the requirements of the Illinois Administrative Procedure Act" (APA). IERG Reply at 5, citing 415 ILCS 5/28/5(e)(1) (2004); *see* 5 ILCS 100/1-1 *et seq*. (2004). IERG notes that the APA requires that the Agency's first notice proposal must include an initial regulatory flexibility analysis containing various specific elements. IERG Reply at 5, citing 5 ILCS 100/5-40(b)(4) (2004). IERG argues that the Agency failed to provide this analysis so that "the Board's action to move the Proposed Rules to first notice is in violation of the APA." IERG Reply at 6. However, IERG states that, "[s]ince the Phase II NO_x SIP Call Engines are all located at large sources, IERG will not object to the continued application of the Section 28.5 rulemaking process to the portion of the Proposed Rule that includes the 28 Phase II NO_x SIP Call Engines." *Id*.

Statewide Applicability

IERG notes that the Agency's response "cites three rulemakings for the proposition that Section 28.5 rulemaking is an accepted practice for rules that are not specifically required by the CAA or that are applicable statewide." IERG Reply at 7 (citations omitted); *see* Agency IERG Resp. at 8. IERG stresses that none of these cases involved an objection to proceeding under Section 28.5 and therefore "do not stand for any proposition regarding the appropriate use of Section 28.5." IERG Reply at 8; *see* 415 ILCS 5/28.5 (2004).

Opportunities for Public Comment

IERG disputes the Agency's statement that a "shortened period for public participation and review by the Board are inherent in a proceeding under Section 28.5; however, this issue is irrelevant to a Section 28.5 analysis." IERG Reply at 8, citing Agency IERG Resp. at 9. In response, IERG cites a circuit court order granting a preliminary injunction to stop a Section 28.5 proceeding. IERG Reply at 8, citing Dynegy Midwest Generation, Inc. v. IPCB and IEPA, 06-CH-213 (Sangamon County Circuit Court) (May 1, 2006).

Applicability of Section 28.5

IERG argues that the Agency fails to demonstrate that its proposed rule is "'required by the CAA' and that sanctions may be applied by the USEPA if the Proposed Rule is not adopted." IERG Reply at 9, citing 415 ILCS 5/28.5(a), (c) (2004). IERG acknowledges that RACT, the SIP, and RFP are "clearly required by the CAA," but it argues that "the Proposed Rule is not RACT, the SIP or RFP." IERG Reply at 9. IERG claims that "[t]he most that could be claimed for the Proposed Rule is that its provisions may some day need to be included in NO_x RACT rules, the SIP and/or for RFP purposes." *Id*.

IERG claims that, before the proposed rule could be included in NO_x RACT rules or the SIP or to demonstrate RFP, the Agency will require more definite modeling results ensuring that the rule will have its intended desirable effect. IERG Reply at 9-10. IERG emphasizes the Agency's statement that this modeling "is ongoing, and the *attainment targets for emissions reductions have not yet been fully identified.*" *Id*. at 10 (emphasis in original). Without the identified emissions reductions, suggests IERG, the Agency cannot claim "that these specific Proposed Rules are required by the CAA because they constitute RACT, the SIP and RFP." *Id*. Specifically with regard to a SIP, IERG argues that the lack of final modeling makes it "impossible to tell whether the requirements of the Proposed Rule are requirements that are '*necessary or appropriate* to meet the applicable requirements of this Act.'" *Id*., citing 42 U.S.C. 7410(a)(2)(A), 7502(c)(4), 7511a(b)(1)(A)(i). IERG thus characterizes the Agency's argument on this point in this fashion:

> preliminary modeling indicates that NO_x emission reductions somewhere in the State will be required, [and that] the modeling might eventually indicate that the emission reductions that would occur due to the Proposed Rule would be advantageous; therefore, the Proposed Rule is required by the CAA and the State would face sanctions if the Proposed Rules is not adopted. IERG Reply at 10

Characterizing the Agency's claim that that this proposal is required by the CAA and thus eligible for consideration under Section 28.5 as "unsubstantiated," IERG expresses the fear that "there may be no end to such claims by the Illinois EPA in the future." IERG Reply at 11. IERG claims that, "if the Illinois EPA is allowed to offer the Proposed Rules under Section 28.5, there would seem to be no rule that would be inappropriate for rulemaking under Section 28.5." *Id*. at 12.

BOARD ANALYSIS

In this section, the Board first addresses arguments concerning the scope of the Board's review in determining whether to accept a rulemaking proposal under Section 28.5. The Board then determines whether it has authority to proceed to consider the Agency's proposal under Section 28.5. The Board then addresses arguments concerning various procedural aspects of the Agency's filing.

Board Authority

In its response to IERG, the Agency claims that IERG assumes "that the Board has a broader scope of review in deciding whether to accept a 'fast-track' rulemaking proposal than is actually conferred by Section 28.5." Agency IERG Resp. at 2. The Agency argues that the Board is limited to a minimal technical review to determine whether the Agency has submitted all the information required by the "checklist" at Section 28.5(e). *Id*.; *see* 415 ILCS 5/28.5(e) (2004).

To that end, the Agency claims that a hearing officer order issued in this proceeding on April 20, 2007 constitutes the Board's assessment "that the proposal met the regulatory and statutory checklist for proceeding under Section 28.5 of the Act." Agency IERG Resp. at 3-4. Reviewing that order, the Board finds that it addresses only procedural issues such as scheduling hearings and prefiling testimony. The order does not substantively assess or determine whether the Agency has submitted all of the information required by the checklist at Section 28.5(e) of the Act. The order does not assess or determine whether submitting all of the information required by the checklist is itself sufficient to allow the Board to proceed under Section 28.5. Furthermore, the order notes the Board's statement in its first notice order and opinion that, until ruling on the pending objection to the use of Section 28.5 procedures, the Board would continue to proceed under the strict deadlines imposed in that section. The Agency's emphasis upon the hearing officer order to suggest that the Board has already accepted jurisdiction of this proposal under Section 28.5 is, at best, misplaced.

Furthermore, in a recent order addressing objections to proceeding under Section 28.5 in another docket, the Board stated that, "[w]hen the Agency argues that the Board's review of this proposal is limited to technical or procedural issues, it disregards well-settled case law providing an agency has authority to determine whether it has jurisdiction over a proceeding." Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources (Mercury), PCB 06-25, slip op. at 14-15 (April 20, 2006). After reviewing case law, a Board resolution on Section 28.5 procedures, and its own procedural rules, the Board found in that case "that both the language of the Act and well-settled case law authorize the Board to consider whether or not a proposal filed pursuant to Section 28.5 may proceed under that provision." *Id*. at 16. Accordingly, the Board will consider below whether it may continue to proceed with the entirety of the Agency's proposal under Section 28.5.

Use of Section 28.5 "Fast-Track" Procedures

NO_x RACT, RFP, ROP, and SIP Revisions

The "fast-track" procedures of Section 28.5 apply only "to the adoption of rules proposed by the Agency and required to be adopted by the State" under the CAA. 415 ILCS 5/28.5(a) (2004). "For purposes of this Section, 'requires to be adopted' refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules." 415 ILCS 5/28.5(c) (2004). Generally, the objectors argue that, to the extent that the Agency's proposal applies to emission units other than those addressed in the NO_x SIP Call Phase II, USEPA is not authorized to impose sanctions on the State for failure to adopt them and they are therefore not "federally required to be adopted." *See, e.g.*, Pipeline Obj. at 1; IERG Obj. at 7.

The Agency states that it filed its proposal in part to meet requirements for RFP, RACT, ROP, and attainment demonstrations for the 8-hour ozone and $PM_{2.5}$ NAAQS. Specifically, the Agency claims that it is necessary for the Board to adopt its proposal "to meet the requirements of Section 172 and 182 of the CAA for submitting attainment demonstration, RACT, and RFP." The Agency further claims that, without adoption of its proposal, Illinois cannot submit a plan that would satisfy these various requirements. The Agency has concluded that, if it fails to submit plans meeting these requirements, USEPA has authority under Section 110 of the CAA to impose a FIP on the state. The Agency also argues that USEPA could, under Section 179 of the CAA, impose sanctions, resulting in a loss of highway funds and an increase in emissions offset requirements.

To the extent that the Agency's proposal applies to emissions sources other than those addressed in the NO_x SIP Call Phase II, the Board finds that the proposal does not encompass rules that are required to be adopted by the State under the CAA. Although the Agency has stressed that the final rules implementing the 8-hour ozone and $PM_{2.5}$ NAAQS both require SIP revisions containing fully-adopted rules for RACT, RFP, and attainment demonstrations, the Agency has not persuasively traced the language of this portion of its proposal to a specific rule that is required to be adopted by the State under the CAA. Even assuming that the USEPA may impose sanctions for the State's failure to submit a required attainment demonstration or approvable SIP, the Board is not persuaded that the State faces sanctions as a consequence of failing to adopt regulations other than those addressed in the NO_x SIP Call Phase II as an element of those submissions.

Accordingly, based on this record and as further discussed below, the Board finds that it has authority to proceed under the Section 28.5 "fast-track" rulemaking procedures only with respect to that portion of the Agency's proposal required by USEPA's NO_x SIP Call Phase II. The General Assembly contemplated this very situation. Section 28.5(j) provides:

> (j) The Board shall adopt rules in the fast-track rulemaking docket under the requirements of this Section that the CAAA requires to be adopted and may consider a non-required rule in a second docket that shall proceed under Title VII of this Act. 415 ILCS 5/28.5(j) (2004).

The Board therefore finds that this proceeding should be bifurcated. The Board will consider the portion of the Agency's proposal applicable to emissions sources other than those addressed in

the NO_x SIP Call Phase II in a separate docket proceeding under Section 27. By today's order, the Board will send that portion of the Agency's original proposal to first notice without commenting on its merits.

Phase II NO_x SIP Call

The Agency states that it filed its proposal in order to satisfy Illinois' obligations under Phase II of USEPA's NO_x SIP Call, which was promulgated under Section 110(a)(2)(D) of the CAA and which requires the state to address NO_x emissions from large stationary reciprocating combustion engines. In a letter dated October 13, 2005, USEPA notified the State that it had not provided the required Phase II NO_x SIP, and USEPA subsequently published this finding. *See* 71 Fed. Reg. 6347-50. Since Illinois has not submitted a timely SIP, the Agency argues that USEPA now has the authority to impose a FIP under Section 110(c)(1) of the Act or to impose sanctions listed in Section 179(b) of the CAA. *See* 69 Fed. Reg. 21633.

Although the Pipeline Consortium claims that proceeding in this docket under Section 28.5 would not be a proper exercise of the Board's authority, the Pipeline Consortium states that it would set aside its objection as to the portion of the proposal applicable to the NO_x SIP Call Phase II units if the Board bifurcates the proposal and addresses the portion of the proposal that does not apply to those units in a separate docket considered under the provisions of Section 27.

Similarly, although IERG does not believe that the Agency's proposal is appropriate for consideration under the "fast-track" provisions of Section 28.5, IERG notes the position taken by the Pipeline Consortium. Specifically, IERG states that, with regard to 28 engines affected by Phase II of the NO_x SIP Call, it does not object to the use of Section 28.5 procedures.

Consequently, on the basis of the facts and arguments in the record before it, the Board will consider the Agency's proposal with regard to the 28 sources affected by Phase II of the NO_x SIP Call under the procedures of Section 28.5. Solely for the convenience of the participants in this proceeding, and in the interest of focusing testimony and questions at hearing upon the language the Board will consider under Section 28.5, the Board attaches to this order Attachment A. That attachment, based upon the Agency's original proposed amendments to Part 217, strikes through language the Board will no longer consider in this docket and will instead consider in a new docket proceeding under Section 27.

Although the Board will continue to consider in this docket the Agency's original proposed changes to Part 201 and Part 211, the Board notes that the Agency's proposed amendments to Part 211 may now include definitions of terms that will no longer be employed or addressed in this docket. Similarly, the Board believes that the Agency's proposed amendments to Part 217 may now include cross-references to language that will no longer be considered in this docket. Accordingly, the Board seeks comment from the participants on amendments that the Board may wish to incorporate into a second notice opinion in this docket. Finally, the Board states that, in preparing Attachment A, it has made simple formatting changes in the interest of clarity. *See* 1 Ill. Adm. Code 100.340(f).

Procedural Requirements

The Board below separately addresses IERG's procedural arguments and concludes that they provide no basis to prevent the Board from considering the Phase II NO_x SIP Call engines under Section 28.5. To the extent that these arguments may apply in the bifurcated docket R07-19, IERG or another participant may renew them there.

Identification of Federal Basis for Rule

In its objection, IERG stated that it "does not oppose the proposition that the Phase II NO_x SIP Call is a clearly identified document upon which the portion of the Proposed Rules affecting the Phase II NO_x SIP Call Engines could be based." Above, the Board has bifurcated this rulemaking so that it will continue to consider under Section 28.5 only the portion of the Agency's proposal applicable to the Phase II NO_x SIP Call Engines. Accordingly, the Board concludes that the Agency has complied with Section 28.5(3) by sufficiently identifying the federal authority on which its proposal is based. *See* 415 ILCS 5/28.5(3) (2004).

List of Units

In its objection, IERG noted that the Agency's proposal identified 28 engines subject to the Phase II NO_x SIP Call and listed them both in the TSD and as proposed Appendix G to Part 217. Above, the Board has bifurcated this rulemaking so that it will continue to consider under Section 28.5 only the portion of the Agency's proposal applicable to the Phase II NO_x SIP Call Engines. Accordingly, the Board concludes that the Agency has complied with Section 28.5(8) by listing the sources expected to be affected by the proposal to the extent known to the Agency. *See* 415 ILCS 5/28.5(8) (2004).

Summary of Economic Data

In its objection, IERG claimed that the Board could not consider the Phase II NO_x SIP Call engines under Section 28.5 until the Agency corrected an error in economic data it had submitted. The Board notes that, in responding to IERG's objections, the Agency acknowledged and corrected an error by stating that the cost of its proposed changes would be $855 per ton of NO_x reduced annually. The Board concludes that this correction provides no basis to prevent the Board from considering the Phase II NO_x SIP Call engines under Section 28.5.

Regulatory Analysis

In its objection, IERG stated that the Agency had failed to include with its proposal a small business regulatory flexibility analysis. The Board notes IERG's statement that, since the Phase II NO_x SIP call engines are all located at large sources, it would not object to continuing to consider those engines under Section 28.5. Above, the Board has bifurcated this rulemaking so that it will continue to consider under Section 28.5 only the portion of the Agency's proposal applicable to the Phase II NO_x SIP Call Engines. Accordingly, the Board concludes that this argument provides no basis to prevent the Board from considering the Phase II NO_x SIP Call engines under Section 28.5.

CONCLUSION

The Board has carefully examined the arguments presented concerning the Board's authority under Section 28.5 of the Act (415 ILCS 5/28.5 (2004)), and the limits on what may be proposed as a "fast-track" rule. On the basis of that examination, the Board finds that this proceeding should be bifurcated, and the Board will continue to consider under Section 28.5 in docket R07-18 only the portion of the Agency's proposal applicable to the Phase II NO_x SIP Call engines. As to that portion of the Agency's proposal, the Board will proceed as set forth in the April 19, 2007 opinion and order of the Board and the April 20, 2007 hearing officer order.

For the convenience of the participants in this proceeding, and in the interest of focusing testimony and questions at hearing upon the language the Board will continue to consider under "fast-track" procedures, the Board attaches to this order Attachment A. That attachment, based upon the Agency's original proposal, strikes through language the Board will no longer consider in R07-18.

With regard to the remainder of the Agency's proposal, the Board will direct the Clerk to cause publication of the remainder of the Agency's proposal for first notice under Sections 27 and 28 of the Act in docket R07-19 without commenting on the merits of the proposal.

ORDER

The Board directs the Clerk to open docket R07-19 and in that docket cause the publication of the following rule for first notice in the *Illinois Register*.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 211
DEFINITIONS AND GENERAL PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section
211.101 Incorporations by Reference
211.102 Abbreviations and Conversion Factors

SUBPART B: DEFINITIONS

Section
211.121 Other Definitions
211.122 Definitions (Repealed)
211.130 Accelacota
211.150 Accumulator

211.170 Acid Gases
211.210 Actual Heat Input
211.230 Adhesive
211.240 Adhesion Promoter
211.250 Aeration
211.270 Aerosol Can Filling Line
211.290 Afterburner
211.310 Air Contaminant
211.330 Air Dried Coatings
211.350 Air Oxidation Process
211.370 Air Pollutant
211.390 Air Pollution
211.410 Air Pollution Control Equipment
211.430 Air Suspension Coater/Dryer
211.450 Airless Spray
211.470 Air Assisted Airless Spray
211.474 Alcohol
211.479 Allowance
211.484 Animal
211.485 Animal Pathological Waste
211.490 Annual Grain Through-Put
211.495 Anti-Glare/Safety Coating
211.510 Application Area
211.530 Architectural Coating
211.550 As Applied
211.560 As-Applied Fountain Solution
211.570 Asphalt
211.590 Asphalt Prime Coat
211.610 Automobile
211.630 Automobile or Light-Duty Truck Assembly Source or Automobile or Light-Duty Truck Manufacturing Plant
211.650 Automobile or Light-Duty Truck Refinishing
211.660 Automotive/Transportation Plastic Parts
211.670 Baked Coatings
211.680 Bakery Oven
211.685 Basecoat/Clearcoat System
211.690 Batch Loading
211.695 Batch Operation
211.696 Batch Process Train
211.710 Bead-Dipping
211.730 Binders
211.750 British Thermal Unit
211.770 Brush or Wipe Coating
211.790 Bulk Gasoline Plant
211.810 Bulk Gasoline Terminal
211.820 Business Machine Plastic Parts

211.830 Can
211.850 Can Coating
211.870 Can Coating Line
211.890 Capture
211.910 Capture Device
211.930 Capture Efficiency
211.950 Capture System
211.953 Carbon Adsorber
211.955 Cement
211.960 Cement Kiln
211.970 Certified Investigation
211.980 Chemical Manufacturing Process Unit
211.990 Choke Loading
211.1010 Clean Air Act
211.1050 Cleaning and Separating Operation
211.1070 Cleaning Materials
211.1090 Clear Coating
211.1110 Clear Topcoat
211.1120 Clinker
211.1130 Closed Purge System
211.1150 Closed Vent System
211.1170 Coal Refuse
211.1190 Coating
211.1210 Coating Applicator
211.1230 Coating Line
211.1250 Coating Plant
211.1270 Coil Coating
211.1290 Coil Coating Line
211.1310 Cold Cleaning
211.1312 Combined Cycle System
211.1316 Combustion Turbine
211.1320 Commence Commercial Operation
211.1324 Commence Operation
211.1328 Common Stack
211.1330 Complete Combustion
211.1350 Component
211.1370 Concrete Curing Compounds
211.1390 Concentrated Nitric Acid Manufacturing Process
211.1410 Condensate
211.1430 Condensible PM-10
211.1465 Continuous Automatic Stoking
211.1467 Continuous Coater
211.1470 Continuous Process
211.1490 Control Device
211.1510 Control Device Efficiency
211.1515 Control Period

211.1520 Conventional Air Spray
211.1530 Conventional Soybean Crushing Source
211.1550 Conveyorized Degreasing
211.1570 Crude Oil
211.1590 Crude Oil Gathering
211.1610 Crushing
211.1630 Custody Transfer
211.1650 Cutback Asphalt
211.1670 Daily-Weighted Average VOM Content
211.1690 Day
211.1710 Degreaser
211.1730 Delivery Vessel
211.1740 Diesel Engine
211.1750 Dip Coating
211.1770 Distillate Fuel Oil
211.1780 Distillation Unit
211.1790 Drum
211.1810 Dry Cleaning Operation or Dry Cleaning Facility
211.1830 Dump-Pit Area
211.1850 Effective Grate Area
211.1870 Effluent Water Separator
211.1875 Elastomeric Materials
211.1880 Electromagnetic Interference/Radio Frequency Interference (EMI/RFI) Shielding Coatings
211.1885 Electronic Component
211.1890 Electrostatic Bell or Disc Spray
211.1900 Electrostatic Prep Coat
211.1910 Electrostatic Spray
211.1920 Emergency or Standby Unit
211.1930 Emission Rate
211.1950 Emission Unit
211.1970 Enamel
211.1990 Enclose
211.2010 End Sealing Compound Coat
211.2030 Enhanced Under-the-Cup Fill
211.2050 Ethanol Blend Gasoline
211.2070 Excess Air
211.2080 Excess Emissions
211.2090 Excessive Release
211.2110 Existing Grain-Drying Operation (Repealed)
211.2130 Existing Grain-Handling Operation (Repealed)
211.2150 Exterior Base Coat
211.2170 Exterior End Coat
211.2190 External Floating Roof
211.2210 Extreme Performance Coating
211.2230 Fabric Coating

211.2250 Fabric Coating Line
211.2270 Federally Enforceable Limitations and Conditions
211.2285 Feed Mill
211.2290 Fermentation Time
211.2300 Fill
211.2310 Final Repair Coat
211.2330 Firebox
211.2350 Fixed-Roof Tank
211.2360 Flexible Coating
211.2365 Flexible Operation Unit
211.2370 Flexographic Printing
211.2390 Flexographic Printing Line
211.2410 Floating Roof
211.2420 Fossil Fuel
211.2425 Fossil Fuel-Fired
211.2430 Fountain Solution
211.2450 Freeboard Height
211.2470 Fuel Combustion Emission Unit or Fuel Combustion Emission Source
211.2490 Fugitive Particulate Matter
211.2510 Full Operating Flowrate
211.2530 Gas Service
211.2550 Gas/Gas Method
211.2570 Gasoline
211.2590 Gasoline Dispensing Operation or Gasoline Dispensing Facility
211.2610 Gel Coat
211.2620 Generator
211.2630 Gloss Reducers
211.2650 Grain
211.2670 Grain-Drying Operation
211.2690 Grain-Handling and Conditioning Operation
211.2710 Grain-Handling Operation
211.2730 Green-Tire Spraying
211.2750 Green Tires
211.2770 Gross Heating Value
211.2790 Gross Vehicle Weight Rating
211.2810 Heated Airless Spray
211.2815 Heat Input
211.2820 Heat Input Rate
211.2830 Heatset
211.2850 Heatset Web Offset Lithographic Printing Line
211.2870 Heavy Liquid
211.2890 Heavy Metals
211.2910 Heavy Off-Highway Vehicle Products
211.2930 Heavy Off-Highway Vehicle Products Coating
211.2950 Heavy Off-Highway Vehicle Products Coating Line
211.2970 High Temperature Aluminum Coating

211.2990 High Volume Low Pressure (HVLP) Spray
211.3010 Hood
211.3030 Hot Well
211.3050 Housekeeping Practices
211.3070 Incinerator
211.3090 Indirect Heat Transfer
211.3110 Ink
211.3130 In-Process Tank
211.3150 In-Situ Sampling Systems
211.3170 Interior Body Spray Coat
211.3190 Internal-Floating Roof
211.3210 Internal Transferring Area
211.3230 Lacquers
211.3250 Large Appliance
211.3270 Large Appliance Coating
211.3290 Large Appliance Coating Line
211.3310 Light Liquid
211.3330 Light-Duty Truck
211.3350 Light Oil
211.3370 Liquid/Gas Method
211.3390 Liquid-Mounted Seal
211.3410 Liquid Service
211.3430 Liquids Dripping
211.3450 Lithographic Printing Line
211.3470 Load-Out Area
211.3480 Loading Event
211.3483 Long Dry Kiln
211.3485 Long Wet Kiln
211.3487 Low-NO_X Burner
211.3490 Low Solvent Coating
211.3500 Lubricating Oil
211.3510 Magnet Wire
211.3530 Magnet Wire Coating
211.3550 Magnet Wire Coating Line
211.3570 Major Dump Pit
211.3590 Major Metropolitan Area (MMA)
211.3610 Major Population Area (MPA)
211.3620 Manually Operated Equipment
211.3630 Manufacturing Process
211.3650 Marine Terminal
211.3660 Marine Vessel
211.3670 Material Recovery Section
211.3690 Maximum Theoretical Emissions
211.3695 Maximum True Vapor Pressure
211.3710 Metal Furniture
211.3730 Metal Furniture Coating

211.3750 Metal Furniture Coating Line
211.3770 Metallic Shoe-Type Seal
211.3780 Mid-Kiln Firing
211.3790 Miscellaneous Fabricated Product Manufacturing Process
211.3810 Miscellaneous Formulation Manufacturing Process
211.3830 Miscellaneous Metal Parts and Products
211.3850 Miscellaneous Metal Parts and Products Coating
211.3870 Miscellaneous Metal Parts or Products Coating Line
211.3890 Miscellaneous Organic Chemical Manufacturing Process
211.3910 Mixing Operation
211.3915 Mobile Equipment
211.3930 Monitor
211.3950 Monomer
211.3960 Motor Vehicles
211.3965 Motor Vehicle Refinishing
211.3970 Multiple Package Coating
211.3980 Nameplate Capacity
211.3990 New Grain-Drying Operation (Repealed)
211.4010 New Grain-Handling Operation (Repealed)
211.4030 No Detectable Volatile Organic Material Emissions
211.4050 Non-Contact Process Water Cooling Tower
211.4055 Non-Flexible Coating
211.4065 Non-Heatset
211.4067 NO_X Trading Program
211.4070 Offset
211.4090 One Hundred Percent Acid
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211.4170 Open Top Vapor Degreasing
211.4190 Open-Ended Valve
211.4210 Operator of a Gasoline Dispensing Operation or Operator of a Gasoline Dispensing Facility
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211.4350 Owner of a Gasoline Dispensing Operation or Owner of a Gasoline Dispensing Facility
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211.5470 Refinery Unit or Refinery Process Unit
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211.5690 Roll Coater
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211.6550 Synthetic Organic Chemical or Polymer Manufacturing Plant
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AUTHORITY: Implementing Sections 9, 9.1, 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9, 9.1, 9.9, 10, 27, and 28.5].

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 201: Definitions, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13590; amended in R82-1 (Docket A) at 10 Ill. Reg. 12624, effective July 7, 1986; amended in R85-21(A) at 11 Ill. Reg. 11747, effective June 29, 1987; amended in R86-34 at 11 Ill. Reg. 12267, effective July 10, 1987; amended in R86-39 at 11 Ill. Reg. 20804, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 787, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7284, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7621, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10862, effective June 27, 1989; amended in R89-8 at 13 Ill. Reg. 17457, effective January 1, 1990; amended in R89-16(A) at 14 Ill. Reg. 9141, effective May 23, 1990; amended in R88-30(B) at 15 Ill. Reg. 5223, effective March 28, 1991; amended in R88-14 at 15 Ill. Reg. 7901, effective May 14, 1991; amended in R91-10 at 15 Ill. Reg. 15564, effective October 11, 1991; amended in R91-6 at 15 Ill. Reg. 15673, effective October 14, 1991; amended in R91-22 at 16 Ill. Reg. 7656, effective May 1, 1992; amended in R91-24 at 16 Ill. Reg. 13526, effective August 24, 1992; amended in R93-9 at 17 Ill. Reg. 16504, effective September 27, 1993; amended in R93-11 at 17 Ill. Reg. 21471, effective December 7, 1993; amended in R93-14 at 18 Ill. Reg. 1253, effective January 18, 1994; amended in R94-12 at 18 Ill. Reg. 14962, effective September 21, 1994; amended in R94-14 at 18 Ill. Reg. 15744, effective October 17, 1994; amended in R94-15 at 18 Ill. Reg. 16379, effective October 25, 1994; amended in R94-16 at 18 Ill. Reg. 16929, effective November 15, 1994; amended in R94-21, R94-31 and R94-32 at 19 Ill. Reg. 6823, effective May 9, 1995; amended in R94-33 at 19 Ill. Reg. 7344, effective May 22, 1995; amended in R95-2 at 19 Ill. Reg. 11066, effective July 12, 1995; amended in R95-16 at 19 Ill. Reg. 15176, effective October 19, 1995; amended in R96-5 at 20 Ill. Reg. 7590, effective May 22, 1996; amended in R96-16 at 21 Ill. Reg. 2641, effective February 7, 1997; amended in R97-17 at 21 Ill. Reg. 6489, effective May 16, 1997; amended in R97-24 at 21 Ill. Reg. 7695, effective June 9, 1997; amended in R96-17 at 21 Ill. Reg. 7856, effective June 17, 1997; amended in R97-31 at 22 Ill. Reg. 3497, effective February 2, 1998; amended in R98-17 at 22 Ill. Reg.11405, effective June 22, 1998; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-17 at 25 Ill. Reg. 5900, effective April 17, 2001; amended in R05-16 at 29 Ill. Reg. 8181, effective May 23, 2005; amended in R05-11 at 29 Ill. Reg.8892, effective June 13, 2005; amended in R04-12/20 at 30 Ill. Reg. 9654, effective May 15, 2006; amended in R07-19 at 31 Ill. Reg. _____, effective _____.

SUBPART B: DEFINITIONS

Section 211.1740 Diesel Engine

"Diesel engine" means for the purposes of 35 Ill. Adm. Code 217, Subpart Q, a compression ignited two- or four-stroke engine in which liquid fuel injected into the combustion chamber ignites when the air charge is compressed to a temperature sufficiently high for auto-ignition.

(Source: Added at 31 Ill. Reg._____, effective _____)

Section 211.1920 Emergency or Standby Unit

"Emergency or Standby Unit" means, for a stationary gas turbine or stationary reciprocating internal combustion engine, a unit that:

a) Supplies power for the source at which it is located but operates only when the normal supply of power has been rendered unavailable by circumstances beyond the control of the owner or operator of the source and only as necessary to assure the availability of the engine or turbine. An emergency standby unit may not be operated to supplement a primary power source when the load capacity or rating of the primary power source has been reached or exceeded.~~;~~

b) Operates exclusively for firefighting or flood control or both.~~; or~~

c) Operates in response to and during the existence of any officially declared disaster or state of emergency.

d) Operates for the purpose of testing, repair or routine maintenance to verify its readiness for emergency standby use.

The term does not include equipment used for purposes other than emergencies, as described above, such as to supply power during high electric demand days.

(Source: Amended at 31 Ill. Reg._____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER C: EMISION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 217
NITROGEN OXIDES EMISSIONS
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217.100 Scope and Organization
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SUBPART C: EXISTING FUEL COMBUSTION EMISSION SOURCES

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SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES AND TURBINES

SUBPART T: CEMENT KILNS

SUBPART U: NO_x CONTROL AND TRADING PROGRAM FOR SPECIFIED NO_x GENERATING UNITS

SUBPART V: ELECTRIC POWER GENERATION

SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL GENERATING UNITS

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Authority: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27, and 28.5 (2004)].

Source: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-19 at 31 Ill. Reg. _____, effective _____.

SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES AND TURBINES

Section 217.386 Applicability

a) A stationary reciprocating internal combustion engine or turbine that meets the criteria in subsection (a)(1) or (a)(2) of this Section is an affected unit and is subject to the requirements of this Subpart Q.

1) The engine at nameplate capacity is rated at equal to or greater than 500 bhp output; or

2) The turbine is rated at equal to or greater than 3.5 MW (4,694 bhp) output at 14.7 psia, 59°F, and 60 percent relative humidity.

b) Notwithstanding subsection (a) of this Section, an engine or turbine will not be an affected unit and is not subject to the requirements of this Subpart Q, if the engine or turbine is or has:

1) Used as an emergency or standby unit as defined by 35 Ill. Adm. Code 211.1920;

2) Used for research or for the purposes of performance verification or testing;

3) Used to control emissions from landfills, where at least 50 percent of the heat input is gas collected from a landfill;

4) Used for agricultural purposes including the raising of crops or livestock that are produced on site, but not associated businesses like packing operations, sale of equipment or repair;

5) A nameplate capacity rated at less than 1500 bhp (1118 kW) output, mounted on a chassis or skids, designed to be moveable, and moved to a different source at least once every 12 months; or

6) Regulated under Subpart W or a subsequent federal NO_x Trading program for electrical generating units.

c) If an exempt unit ceases to fulfill the criteria specified in subsection (b) of this Section, the owner or operator must notify the Agency in writing within 30 days after becoming aware that the exemption no longer applies and comply with the control requirements of this Subpart Q.

d) The requirements of this Subpart Q will continue to apply to any engine or turbine that has ever been subject to the control requirements of Section 217.388, even if the affected unit ceases to fulfill the rating requirements of subsection (a) of this Section or becomes eligible for an exemption pursuant to subsection (b) of this Section.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.388 Control and Maintenance Requirements

On and after the applicable compliance date in Section 217.392, an owner or operator of an affected unit must inspect and maintain affected units as required by subsection (d) of this Section and comply with either the applicable emissions concentration as set forth in subsection

(a) of this Section, or the requirements for an emissions averaging plan as specified in subsection (b) of this Section or the requirements for operation as a low usage unit as specified in subsection (c) of this Section.

a) The owner or operator must limit the discharge from an affected unit into the atmosphere of any gases that contain NO_x to no more than:

1) 150 ppmv (corrected to 15 percent O_2 on a dry basis) for spark-ignited rich-burn engines;

2) 210 ppmv (corrected to 15 percent O_2 on a dry basis) for spark-ignited lean-burn engines, except for existing spark-ignited Worthington engines that are not listed in Appendix G;

3) 365 ppmv (corrected to 15 percent O_2 on a dry basis) for existing spark-ignited Worthington engines that are not listed in Appendix G;

4) 660 ppmv (corrected to 15 percent O_2 on a dry basis) for diesel engines;

5) 42 ppmv (corrected to 15 percent O_2 on a dry basis) for gaseous fuel-fired turbines; and

6) 96 ppmv (corrected to 15 percent O_2 on a dry basis) for liquid fuel-fired turbines.

b) The owner or operator must comply with the requirements of the applicable emissions averaging plan as set forth in Section 217.390.

c) The owner or operator must operate the affected unit as a low usage unit pursuant to subsection (c)(1) or (c)(2) of this Section. Low usage units are not subject to the requirements of this Subpart Q except for the requirements to inspect and maintain the unit pursuant to subsection (d) of this Section, and retain records pursuant to Sections 217.396(b) and (c). Only one of the following exemptions may be utilized at a particular source:

1) The potential to emit (PTE) is no more than 100 TPY NO_x aggregated from all engines and turbines located at the source that are not otherwise exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section and the NO_x PTE limit is contained in a federally enforceable permit; or

2) The aggregate bhp-hr/MW-hr from all affected units located at the source that are not exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section, are less than or equal to the bhp-hrs and MW-hrs operation limit listed in subsection (c)(2)(A) and (c)(2)(B) of this Section. For units not located at a natural

gas transmission compressor station or storage facility that drive a natural gas compressor station, the operation limits of subsections (c)(2)(A) and (B) of this Section must be contained in a federally enforceable permit.

A) 8 mm bhp-hrs or less on an annual basis for engines; and

B) 20,000 MW-hrs or less on an annual basis for turbines.

d) The owner or operator must inspect and perform periodic maintenance on the affected unit, in accordance with a Maintenance Plan that documents:

1) For a unit not located at natural gas transmission compressor station or storage facility either:

A) The manufacturer's recommended inspection and maintenance of the applicable air pollution control equipment, monitoring device, and affected unit; or

B) If the original equipment manual is not available or substantial modifications have been made that require an alternative procedure for the applicable air pollution control device, monitoring device, or affected unit, the owner or operator must establish a plan for inspection and maintenance in accordance with what is customary for the type of air pollution control equipment, monitoring device, and affected unit.

2) For a unit located at a natural gas compressor station or storage facility, the operator's maintenance procedures for the applicable air pollution control device, monitoring device, and affected unit.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.390 Emissions Averaging Plans

a) An owner or operator of certain affected units may comply through an emissions averaging plan.

1) The unit or units that commenced operation before January 1, 2002, may be included in an emissions averaging plan as follows:

A) Units located at a single source or at multiple sources in Illinois, so long as the units are owned by the same company or parent company where the parent company has working control through stock ownership of its subsidiary corporations. A unit may be listed in only one emissions averaging plan;

B) Units that have a compliance date later than the control period for which the averaging plan is being used for compliance; and

C) Units which the owner or operator may claim as exempt pursuant to Section 217.386(b) but does not claim exempt. For as long as such a unit is included in an emissions averaging plan, it will be treated as an affected unit and subject to the applicable emission concentration limits, testing, monitoring, recordkeeping and reporting requirements.

2) The following types of units may not be included in an emissions averaging plan:

A) Units that commence operation after January 1, 2002, unless the unit replaces an engine or turbine that commenced operation on or before January 1, 2002, or it replaces an engine or turbine that replaced a unit that commenced operation on or before January 1, 2002. The new unit must be used for the same purpose as the replacement unit. The owner or operator of a unit that is shutdown and replaced must comply with the provisions of Section 217.396(d)(3) before the replacement unit may be included in an emissions averaging plan.

B) Units which the owner or operator is claiming are exempt pursuant to Section 217.386(b) or as a low usage unit pursuant to Section 217.388(c).

b) An owner or operator must submit an emissions averaging plan to the Agency by the applicable compliance date set forth in Section 217.392. The plan must include, but is not limited to:

1) The list of affected units included in the plan by unit identification number and permit number.

2) A sample calculation demonstrating compliance using the methodology provided in subsection (f) of this Section for both the ozone season and calendar year.

c) An owner or operator may amend an emissions averaging plan only once per calendar year. An amended plan must be submitted to the Agency by May 1 of the applicable calendar year. If an amended plan is not received by the Agency by May 1 of the applicable calendar year, the previous year's plan will be the applicable emissions averaging plan.

d) Notwithstanding subsection (c) of this Section, an owner or operator, and the

buyer, if applicable:

1) Must submit an updated emissions averaging plan or plans to the Agency within 60 days, if a unit that is listed in an emissions averaging plan is sold or taken out of service.

2) May amend its emissions averaging plan to include another unit within 30 days of discovering that the unit no longer qualifies as an exempt unit pursuant to Section 217.386(b) or as a low usage unit pursuant to Section 217.388(c).

e) An owner or operator must:

1) Demonstrate compliance for both the ozone season (May 1 through September 30) and the calendar year (January 1 through December 31) by using the methodology and the units listed in the most recent emissions averaging plan submitted to the Agency pursuant to subsection (b) of this Section; the higher of the monitoring or test data determined pursuant to Section 217.394; and the actual hours of operation for the applicable control period;

2) Notify the Agency by October 31 following the ozone season, if compliance cannot be demonstrated for that ozone season; and

3) Submit to the Agency by January 31 following each calendar year, a compliance report containing the information required by Section 217.396(d)(4).

f) The total mass of actual NO_x emissions from the units listed in the emissions averaging plan must be equal to or less than the total mass of allowable NO_x emissions for those units for both the ozone season and calendar year. The following equation must be used to determine compliance:

$$N_{act} \leq N_{all}$$

Where:

N_{act} = $\sum_{i=1}^{n} EM_{act(i)}$

N_{all} = $\sum_{i=1}^{n} EM_{all(i)}$

N_{act} = Total sum of the actual NO_x mass emissions from units included in the averaging plan for each fuel used (lbs per ozone season and calendar year).

N_{all} = Total sum of the allowable NO_x mass emissions from units included in the averaging plan for each fuel used (lbs per ozone season and calendar year).

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in lbs for a unit as determined in subsection (g)(2), (g)(3), (g)(4), (g)(5),or (g)(6) of this Section.

$EM_{act(i)}$ = Total mass of actual NO_X emissions in lbs for a unit as determined in subsection (g)(1), (g)(3), (g)(5) or (h) of this Section.

i = Subscript denoting an individual unit and fuel used.

n = Number of different units in the averaging plan.

g) For each unit in the averaging plan, and each fuel used by a unit, determine actual and allowable NO_x emissions using the following equations, except as provided for in subsection (h) of this Section:

1) Actual emissions must be determined as follows:

$$EM_{act(i)} = E_{act(i)} \times H_i$$

$$E_{act(i)} = \frac{\sum_{j=1}^{m} C_{d(act(j))} x F_d x \left(\frac{20.9}{20.9 - \%O_{2d(j)}} \right)}{m}$$

2) Allowable emissions must be determined as follows:

$$EM_{all(i)} = E_{all(i)} \times H_i$$

$$E_{all(i)} = \frac{\sum_{j=1}^{m} C_{d(all)} x F_d x \left(\frac{20.9}{20.9 - \%O_{2d(j)}} \right)}{m}$$

Where:

$EM_{act(i)}$ = Total mass of actual NO_x emissions in lbs for a unit.

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in lbs for a unit.

E_{act} = Actual NO_x emission rate (lbs/mmBtu) calculated according to the above equation.

E_{all} = Allowable NO_x emission rate (lbs/mmBtu) calculated according to the above equation.

H = Heat input (mmBtu/ozone season or mmBtu/year) calculated from fuel flow meter and the heating value of the fuel used.

$C_{d(act)}$ = Actual concentration of NO_x in lb/dscf (ppmv x 1.194 x 10^{-7}) on a dry basis for the fuel used. Actual concentration is determined on each of the most recent test run or monitoring pass performed pursuant to Section 217.394, whichever is higher.

$C_{d(all)}$ = Allowable concentration of NO_x in lb/dscf (allowable emission limit in ppmv specified in Section 217.388(a), except as provided for in subsection (g)(6) of this Section, if applicable.
multiplied by 1.194 x 10^{-7}) on a dry basis for the fuel used.

F_d = The ratio of the gas volume of the products of combustion to the heat content of the fuel (dscf/mmBtu) as given in the table of F Factors included in 40 CFR 60, Appendix A, Method 19 or as determined using 40 CFR 60, Appendix A, Method 19.

$\%O_{2d}$ = Concentration of oxygen in effluent gas stream measured on a dry basis during each of the applicable test or monitoring runs used for determining emissions, as represented by a whole number percent, e.g., for 18.7%O_{2d}, 18.7 would be used.

i = Subscript denoting an individual unit and the fuel used.

j = Subscript denoting each test run or monitoring pass for an affected unit for a given fuel.

m = The number of test runs or monitoring passes for an affected unit using a given fuel.

3) For a replacement unit that is electric-powered, the allowable NO_x emissions from the affected unit that was replaced should be used in the averaging calculations and the actual NO_x emissions for the electric-powered replacement unit ($EM_{(i)act\ elec}$) are zero. Allowable NO_x emissions for the electric-powered replacement are calculated using the actual total bhp-hrs generated by the electric-powered replacement unit on an ozone season and on an annual basis multiplied by the allowable NO_x emission rate in lb/bhp-hr of the replaced unit.

The allowable mass of NO_x emissions from an electric-powered replacement unit ($EM_{(i)all\ elec}$) must be determined by multiplying the nameplate capacity of the unit by the hours operated during the ozone season or annually and the allowable NO_x emission rate of the replaced unit ($E_{all\ rep}$) in lb/mmBtu converted to lb/bhp-hr. For this calculation the following equation should be used:

$EM_{all\ elec(i)} = bhp \times OP \times F \times E_{all\ rep(i)}$

Where:

$EM_{all\ elec(i)}$ = Mass of allowable NO_x emissions from the electric-powered replacement unit in pounds per ozone season or calendar year.

Bhp = Nameplate capacity of the electric-powered replacement unit in brake-horsepower.

OP = Operating hours during the ozone season or calendar year.

F = Conversion factor of 0.0077 mmBtu/bhp-hr.

$E_{all\ rep(i)}$ = Allowable NO_X emission rate (lbs/mmBtu) of the replaced unit.

i = Subscript denoting an individual electric unit and the fuel used.

4) For a replacement unit that is not electric, the allowable NO_x emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be either:

A) Prior to the applicable compliance date for the replaced unit pursuant to Section 217.392, the higher of the actual NO_x emissions as determined by testing or monitoring data or the applicable uncontrolled NO_x emissions factor from Compilation of Air pollutant emission Factors: AP-42, Volume I: Stationary Point and Area Sources, as incorporated by reference in Section 217.104 for the unit that was replaced; or

B) On and after the applicable compliance date for the replaced unit pursuant to Section 217.392, the applicable emissions concentration for the type of unit that replaced pursuant to Section 217.388(a).

5) For a unit that is replaced with purchased power, the allowable NO_x emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be the emissions concentration as set forth in Section 217.388(a) or subsection (g)(6) of this Section, when applicable, for the type of unit that was replaced. For owners or operators replacing units with purchased power, the annual hours of operations that must be used are the calendar year hours of operation for the unit that was shutdown averaged over the three-year period prior to the shutdown. The actual NO_x emissions for the units replaced by purchased power ($EM_{(i)act}$) are zero. These units may be included in any emissions averaging plan for no more than five years beginning with the calendar year that the replaced unit is shut down.

6) For units that have a later compliance date, allowable emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be:

A) Prior to the applicable compliance date pursuant to Section 217.392, the higher of the actual NO_x emissions as determined by testing or monitoring data, or the applicable uncontrolled NO_x emissions factor from Compilation of Air Pollutant Emission Factors: AP-42, Volume I: Stationary Point and Areas Sources, as incorporated by reference in Section 217.104; and

B) On and after the units applicable compliance date pursuant to Section 217.392, the applicable emissions concentration for that type of unit pursuant to Section 217.388(a).

h) For units that use CEMS the data must show that the total mass of actual NO_x emissions determined pursuant to subsection (h)(1) of this Section is less than or equal to the allowable NO_x emissions calculated in accordance with the equations in subsections (f) and (h)(2) of this Section for both the ozone season and calendar year. The equations in subsection (g) of this Section will not apply.

1) The total mass of actual NO_x emissions in lbs for a unit (EM_{act}) must be the sum of the total mass of actual NO_x emissions from each affected unit using CEMS data collected in accordance with 40 CFR 60 or 75, or alternate methodology that has been approved by the Agency or USEPA and included in a federally enforceable permit.

2) The allowable NO_x emissions must be determined as follows:

$$EM_{(all)} = \sum_{i=1}^{m} (Cd_i * flowstack_i * 1.194 x 10^{-7})$$

Where:

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in lbs for a unit.
$Flow_i$ = Stack flow (dscf/hr) for a given stack.
Cd_i = Allowable concentration of NO_x (ppmv) specified in Section 217.388(a) of this subpart for a given stack. (1.194×10^{-7}) converts to lb/dscf).
j = subscript denoting each hour operation of a given unit.
m = Total number of hours of operation of a unit.
i = Subscript denoting an individual unit and the fuel used.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.392 Compliance

a) An owner or operator of an affected unit may not operate that unit unless it meets the applicable concentration limit in Section 217.388(a), or is included in an emissions averaging plan pursuant to Section 217.388(b), or meets the low usage requirements pursuant to Section 217.388(c), and complies with all other applicable requirements of this Subpart Q by the earliest applicable date listed below:

1) On and after May 1, 2007, an owner or operator of an affected engine listed in Appendix G may not operate the affected engine unless the requirements of this Subpart Q are met or the affected engine is exempt pursuant to Section 217.386(b);

2) On and after January 1, 2009, an owner or operator of an affected unit and that is located in Cook, DuPage, Aux Sable Township and Goose Lake Township in Grundy, Kane, Oswego Township in Kendall, Lake, McHenry, Will, Jersey, Madison, Monroe, Randolph Township in Randolph, or St. Clair County, and is not listed in Appendix G may not operate the affected unit unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b);

3) On and after January 1, 2011, an owner or operator of an affected engine with a nameplate capacity rated at 1500 bhp or more, and affected turbines rated at 5 MW (6,702 bhp) or more that is not subject to subsection (a)(1) or (a)(2) of this Section, may not operate the affected unit unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b); or

4) On and after January 1, 2012, an owner or operator of an affected engine with a nameplate capacity rated at less than 1500 bhp or an affected turbine rated at less than 5 MW (6,702 bhp) that is not subject to subsection (a)(1), (a)(2) or (a)(3) of this Section, may not operate the affected engine or turbine unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b).

b) Owners and operators of an affected unit may use NO_x allowances to meet the compliance requirements in Section 217.388 as specified below. A NO_x allowance is defined as an allowance used to meet the requirements of a NO_x trading program administered by USEPA where one allowance is equal to one ton of NO_x emissions.

1) NO_x allowances may only be used under the following circumstances:

A) An anomalous or unforeseen operating scenario inconsistent with historical operations for a particular ozone season or calendar year that causes an emissions exceedance.

B) To achieve compliance no more than twice in any rolling five-year period.

C) For a unit that is not listed in Appendix G.

2) The owner or operator of the affected unit must surrender to the Agency one NO_x allowance for each ton or portion of a ton of NO_x by which actual emissions exceed allowed emissions. For noncompliance with a seasonal limit, a NO_x ozone season allowance must be used. For noncompliance with the emissions concentration limits in Section 217.388(a) or an annual limitation in an emissions averaging plan, only a NO_x annual allowance may be used.

3) The owner or operator must submit a report documenting the circumstances that required the use of NO_x allowances and identify what actions will be taken in subsequent years to address these circumstances and must transfer the NO_x allowances to the Agency's federal NO_x retirement account. The report and the transfer of allowances must be submitted by October 31 for exceedances during the ozone season and March 1 for exceedances of the emissions concentration or the annual emission averaging plan limits. The report must contain the NATS serial numbers of the NO_x allowances.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.394 Testing and Monitoring

a) An owner or operator of an engine or turbine must conduct an initial performance test pursuant to subsection (c)(1) or (c)(2) of this Section as follows:

1) By May 1, 2007, for affected engines listed in Appendix G. Performance tests must be conducted on units listed in Appendix G, even if the unit is included in an emissions averaging plan pursuant to Section 217.388(b).

2) By the applicable compliance date as set forth in Section 217.392, or within the first 876 hours of operation per calendar year, whichever is later:

A) For affected units not listed in Appendix G that operate more than 876 hours per calendar year; and

B) For units that are not affected units that are included in an emissions averaging plan and operate more than 876 hours per calendar year.

3) Once within the five-year period after the applicable compliance date as set forth in Section 217.392:

A) For affected units that operate fewer than 876 hours per calendar year; and

B) For units that are not affected units that are included in an emissions averaging plan and that operate fewer than 876 hours per calendar year

b) An owner or operator of an engine or turbine must conduct subsequent performance tests pursuant to subsection (c)(1) or (c)(2) of this Section as follows:

1) For affected engines listed in Appendix G and all units included in an emissions averaging plan, once every five years. Testing must be performed in the calendar year by May 1 or within 60 days of starting operation, whichever is later;

2) If the monitored data shows that the unit is not in compliance with the applicable emissions concentration or emissions averaging plan, the owner or operator must report the deviation to the Agency in writing within 30 days and conduct a performance test pursuant to subsection (c) of this Section within 90 days of the determination of noncompliance; and

3) When in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.388, the owner or operator of a unit must, at his or her own expense, conduct the test in accordance with the applicable test methods and procedures specified in this Section 217.394 within 90 days of receipt of a notice to test from the Agency or USEPA.

c) Testing Procedures:

1) For an engine: The owner or operator must conduct a performance test using Method 7 or 7E of 40 CFR 60, Appendix A, as incorporated by reference in Section 217.104. Each compliance test must consist of three separate runs, each lasting a minimum of 60 minutes. NO_x emissions must be measured while the affected unit is operating at peak load. If the unit combusts more than one type of fuel (gaseous or liquid) including backup fuels, a separate performance test is required for each fuel.

2) For a turbine: The owner operator must conduct a performance test using the applicable procedures and methods in 40 CFR 60.4400, as incorporated by reference in Section 217.104.

d) Monitoring: Except for those years in which a performance test is conducted pursuant to subsection (a) or (b) of this Section, the owner or operator of an affected unit or a unit included in an emissions averaging plan must monitor NO_x concentrations annually, once between January 1 and May 1 or within the first 876 hours of operation per calendar year, whichever is later. If annual operation is less than 876 hours per calendar year, each affected unit must be monitored at least once every five years. Monitoring must be performed as follows:

1) A portable NO_x monitor and utilizing method ASTM D6522-00, as incorporated by reference in Section 217.104, or a method approved by the Agency must be used. If the engine or turbine combusts both liquid or gaseous fuels as primary or backup fuels, separate monitoring is required for each fuel.

2) NO_x and O_2 concentrations measurements must be taken three times for a duration of at least 20 minutes. Monitoring must be done at highest achievable load. The concentrations from the three monitoring runs must be averaged to determine whether the affected unit is in compliance with the applicable emissions concentration or emissions averaging plan as specified in Section 217.388.

e) Instead of complying with the requirements of subsections (a), (b), (c) and (d) of this Section, an owner or operator may install and operate a CEMS on an affected unit that meets the applicable requirements of 40 CFR 60, subpart A, and Appendix B, incorporated by reference in Section 217.104, and complies with the quality assurance procedures specified in 40 CFR 60, Appendix F, or 40 CFR 75 as incorporated by reference in Section 217.104, or an alternate procedure as approved by the Agency or USEPA in a federally enforceable permit. The CEMS must be used to demonstrate compliance with the applicable emissions concentration or emissions averaging plan only on an ozone season and annual basis.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.396 Recordkeeping and Reporting

a) Recordkeeping. The owner or operator of a unit included in an emissions averaging plan or an affected unit that is not exempt pursuant to Section 217.386(b) and is not subject to the low usage exemption of Section 217.388(c) must maintain records that demonstrate compliance with the requirements of this Subpart Q which include, but are not limited to:

1) Identification, type (e.g., lean-burn, gas-fired), and location of each unit.

2) Calendar date of the record.

3) The number of hours the unit operated on a monthly basis, and during each ozone season.

4) Type and quantity of the fuel used on a daily basis.

5) The results of all monitoring performed on the unit and reported deviations.

6) The results of all tests performed on the unit.

7) The plan for performing inspection and maintenance of the units, air pollution control equipment, and the applicable monitoring device pursuant to Section 217.388(d).

8) A log of inspections and maintenance performed on the unit's air emissions, monitoring device, and air pollution control device. These records must include, at a minimum, date, load levels and any manual adjustments along with the reason for the adjustment (e.g., air to fuel ratio, timing or other settings).

9) If complying with the emissions averaging plan provisions of Sections 217.388(b) and 217.390 copies of the calculations used to demonstrate compliance with the ozone season and annual control period limits, noncompliance reports for the ozone season, and ozone and annual control period compliance reports submitted to the Agency.

10) Identification of time periods for which operating conditions and pollutant data were not obtained by either the CEMS or alternate monitoring procedures including the reasons for not obtaining sufficient data and a description of corrective actions taken.

11) Any NO_x allowance reconciliation reports submitted pursuant to Section 217.392(e).

b) The owner or operator of an affected unit that is complying with the low usage provisions of Section 217.388(c), must:

1) For each unit complying with Section 217.388(c)(1), maintain a record of the NO_x emissions for each calendar year; or

2) For each unit complying with Section 217.388(c)(2), maintain a record of bhp or MW hours operated each calendar year.

c) The owner or operator of an affected unit or unit included in an emissions averaging plan must maintain the records required by subsections (a) and (b) of

this Section for a period of five-years at the source at which the unit is located. The records must be made available to the Agency and USEPA upon request.

d) Reporting requirements:

1) The owner or operator must notify the Agency in writing 30 days and five days prior to testing pursuant to Section 217.394(a) and:

A) If after the 30-days notice for an initially scheduled test is sent, there is a delay (e.g., due to operational problems) in conducting the performance test as scheduled, the owner or operator of the unit must notify the Agency as soon as possible of the delay in the original test date, either by providing at least seven days prior notice of the rescheduled date of the performance test, or by arranging a new test date with the Agency by mutual agreement;

B) Provide a testing protocol to the Agency 60 days prior to testing; and

C) Not later than 30 days after the completion of the test, submit the results of the test to the Agency.

2) Pursuant to the requirements for monitoring in Section 217.394(d), the owner or operator of the unit must report to the Agency any monitored exceedances of the applicable NO_x concentration from Section 217.388(a) or (b) within 30 days of performing the monitoring.

3) Within 90 days of permanently shutting down an affected unit or a unit included in an emissions averaging plan, the owner or operator of the unit must withdraw or amend the applicable permit to reflect that the unit is no longer in service.

4) If demonstrating compliance through an emissions averaging plan:

A) By October 31 following the applicable ozone season, the owner or operator must notify the Agency if he or she cannot demonstrate compliance for that ozone season; and

B) By January 30 following the applicable calendar year, the owner or operator must submit to the Agency a report that demonstrates the following:

i) For all units that are part of the emissions averaging plan, the total mass of allowable NO_x emissions for the ozone season and for the annual control period;

ii) The total mass of actual NO_x emissions for the ozone season and annual control period for each unit included in the averaging plan;

iii) The calculations that demonstrate that the total mass of actual NO_x emissions are less than the total mass of allowable NO_x emissions using equations in Sections 217.390(f) and (g); and

iv) The information required to determine the total mass of actual NO_x emissions and the calculations performed in subsection (d)(4)(B)(iii) of this Section.

5) If operating a CEMS, the owner or operator must submit an excess emissions and monitoring systems performance report in accordance with the requirements of 40 CFR 60.7(c) and 60.13, or 40 CFR 75 incorporated by reference in Section 217.104, or an alternate procedure approved by the Agency or USEPA and included in a federally enforceable permit.

6) If using NO_x allowances to comply with the requirements of Section 217.388, reconciliation reports as required by Section 217.392(b)(3).

(Source: Added at 31 Ill. Reg. _____, effective _____.)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 17, 2007, by a vote of _-_.

_____
John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

ATTACHMENT A
FAST-TRACK RULES UNDER R07-18
FOR CONSIDERATION AT HEARING BEGINNING MAY 21, 2007

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER C: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 217
NITROGEN OXIDES EMISSIONS
SUBPART A: GENERAL PROVISIONS

Section
217.100 Scope and Organization
217.101 Measurement Methods
217.102 Abbreviations and Units
217.103 Definitions
217.104 Incorporations by Reference

SUBPART B: NEW FUEL COMBUSTION EMISSION SOURCES

Section
217.121 New Emission Sources

SUBPART C: EXISTING FUEL COMBUSTION EMISSION SOURCES

Section
217.141 Existing Emission Sources in Major Metropolitan Areas

SUBPART K: PROCESS EMISSION SOURCES

Section
217.301 Industrial Processes

SUBPART O: CHEMICAL MANUFACTURE

Section
217.381 Nitric Acid Manufacturing Processes

SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES AND TURBINES

Section
217.386 Applicability
217.388 Control and Maintenance Requirements
217.390 Emissions Averaging Plans

SUBPART T: CEMENT KILNS

SUBPART U: NO_x CONTROL AND TRADING PROGRAM FOR SPECIFIED NO_x GENERATING UNITS

SUBPART V: ELECTRIC POWER GENERATION

SUBPART W: NO_x TRADING PROGRAM FOR ELECTRICAL GENERATING UNITS

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Appendix G Existing Reciprocating Internal Combustion Engines Affected by the NO_x SIP Call

Authority: Implementing Sections 9.9 and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act [415 ILCS 5/9.9, 10, 27 and 28.5 (2004)].

Source: Adopted as Chapter 2: Air Pollution, Rule 207: Nitrogen Oxides Emissions, R71-23, 4 PCB 191, April 13, 1972, filed and effective April 14, 1972; amended at 2 Ill. Reg. 17, p. 101, effective April 13, 1978; codified at 7 Ill. Reg. 13609; amended in R01-9 at 25 Ill. Reg. 128, effective December 26, 2000; amended in R01-11 at 25 Ill. Reg. 4597, effective March 15, 2001; amended in R01-16 and R01-17 at 25 Ill. Reg. 5914, effective April 17, 2001; amended in R07-19 at 31 Ill. Reg. _____, effective _____.

SUBPART Q: STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES AND TURBINES

Section 217.386 Applicability

~~a)~~ A stationary reciprocating internal combustion engine listed in Appendix G of this Part ~~or turbine that meets the criteria in subsection (a)(1) or (a)(2) of this Section is an affected unit and~~ is subject to the requirements of this Subpart Q.

~~1) The engine at nameplate capacity is rated at equal to or greater than 500 bhp output; or~~

~~2) The turbine is rated at equal to or greater than 3.5 MW (4,694 bhp) output at 14.7 psia, 59°F, and 60 percent relative humidity.~~

~~b) Notwithstanding subsection (a) of this Section, an engine or turbine will not be an affected unit and is not subject to the requirements of this Subpart Q, if the engine or turbine is or has:~~

~~1) Used as an emergency or standby unit as defined by 35 Ill. Adm. Code 211.1920;~~

~~2) Used for research or for the purposes of performance verification or testing;~~

~~3) Used to control emissions from landfills, where at least 50 percent of the heat input is gas collected from a landfill;~~

~~4) Used for agricultural purposes including the raising of crops or livestock that are produced on site, but not associated businesses like packing operations, sale of equipment or repair;~~

~~5) A nameplate capacity rated at less than 1500 bhp (1118 kW) output.~~

~~mounted on a chassis or skids, designed to be moveable, and moved to a different source at least once every 12 months; or~~

~~6) Regulated under Subpart W or a subsequent federal NO_x Trading program for electrical generating units.~~

~~c) If an exempt unit ceases to fulfill the criteria specified in subsection (b) of this Section, the owner or operator must notify the Agency in writing within 30 days after becoming aware that the exemption no longer applies and comply with the control requirements of this Subpart Q.~~

~~d) The requirements of this Subpart Q will continue to apply to any engine or turbine that has ever been subject to the control requirements of Section 217.388, even if the affected unit ceases to fulfill the rating requirements of subsection (a) of this Section or becomes eligible for an exemption pursuant to subsection (b) of this Section.~~

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.388 Control and Maintenance Requirements

On and after the applicable compliance date in Section 217.392, an owner or operator of an affected unit must inspect and maintain affected units as required by subsection (d) of this Section and comply with either the applicable emissions concentration as set forth in subsection (a) of this Section, or the requirements for an emissions averaging plan as specified in subsection (b) of this Section ~~or the requirements for operation as a low usage unit as specified in subsection (c) of this Section~~.

a) The owner or operator must limit the discharge from an affected unit into the atmosphere of any gases that contain NO_x to no more than:

1) 150 ppmv (corrected to 15 percent O_2 on a dry basis) for spark-ignited rich-burn engines;

2) 210 ppmv (corrected to 15 percent O_2 on a dry basis) for spark-ignited lean-burn engines~~, except for existing spark-ignited Worthington engines that are not listed in Appendix G;~~

~~3) 365 ppmv (corrected to 15 percent O_2 on a dry basis) for existing spark-ignited Worthington engines that are not listed in Appendix G;~~

~~4) 660 ppmv (corrected to 15 percent O_2 on a dry basis) for diesel engines;~~

~~5) 42 ppmv (corrected to 15 percent O_2 on a dry basis) for gaseous fuel-fired turbines; and~~

~~6) 96 ppmv (corrected to 15 percent O_2 on a dry basis) for liquid fuel-fired turbines.~~

b) The owner or operator must comply with the requirements of the applicable emissions averaging plan as set forth in Section 217.390.

~~c) The owner or operator must operate the affected unit as a low usage unit pursuant to subsection (c)(1) or (c)(2) of this Section. Low usage units are not subject to the requirements of this Subpart Q except for the requirements to inspect and maintain the unit pursuant to subsection (d) of this Section, and retain records pursuant to Sections 217.396(b) and (c). Only one of the following exemptions may be utilized at a particular source:~~

~~1) The potential to emit (PTE) is no more than 100 TPY NO_x aggregated from all engines and turbines located at the source that are not otherwise exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section and the NO_x PTE limit is contained in a federally enforceable permit; or~~

~~2) The aggregate bhp-hr/MW-hr from all affected units located at the source that are not exempt pursuant to Section 217.386(b), and not complying with the requirements of subsection (a) or (b) of this Section, are less than or equal to the bhp-hrs and MW-hrs operation limit listed in subsection (c)(2)(A) and (c)(2)(B) of this Section. For units not located at a natural gas transmission compressor station or storage facility that drive a natural gas compressor station, the operation limits of subsections (c)(2)(A) and (B) of this Section must be contained in a federally enforceable permit.~~

~~A) 8 mm bhp-hrs or less on an annual basis for engines; and~~

~~B) 20,000 MW-hrs or less on an annual basis for turbines.~~

~~d)~~ The owner or operator must inspect and perform periodic maintenance on the affected unit, in accordance with a Maintenance Plan that documents:

1) For a unit not located at natural gas transmission compressor station or storage facility either:

A) The manufacturer's recommended inspection and maintenance of the applicable air pollution control equipment, monitoring device, and affected unit; or

B) If the original equipment manual is not available or substantial modifications have been made that require an alternative procedure for the applicable air pollution control device, monitoring device,

or affected unit, the owner or operator must establish a plan for inspection and maintenance in accordance with what is customary for the type of air pollution control equipment, monitoring device, and affected unit.

2) For a unit located at a natural gas compressor station or storage facility, the operator's maintenance procedures for the applicable air pollution control device, monitoring device, and affected unit.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.390 Emissions Averaging Plans

a) An owner or operator of certain affected units may comply through an emissions averaging plan.

1) The unit or units that commenced operation before January 1, 2002, may be included in an emissions averaging plan as follows:

~~A) Units~~ units located at a single source or at multiple sources in Illinois, so long as the units are owned by the same company or parent company where the parent company has working control through stock ownership of its subsidiary corporations. A unit may be listed in only one emissions averaging plan;

~~B) Units that have a compliance date later than the control period for which the averaging plan is being used for compliance; and~~

~~C) Units which the owner or operator may claim as exempt pursuant to Section 217.386(b) but does not claim exempt. For as long as such a unit is included in an emissions averaging plan, it will be treated as an affected unit and subject to the applicable emission concentration limits, testing, monitoring, recordkeeping and reporting requirements.~~

2) The following types of units may not be included in an emissions averaging plan:

~~A) Units~~ units that commence operation after January 1, 2002, unless the unit replaces an engine or turbine that commenced operation on or before January 1, 2002, or it replaces an engine or turbine that replaced a unit that commenced operation on or before January 1, 2002. The new unit must be used for the same purpose as the replacement unit. The owner or operator of a unit that is shutdown and replaced must comply with the provisions of Section

217.396(d)(3) before the replacement unit may be included in an emissions averaging plan.

~~B) Units which the owner or operator is claiming are exempt pursuant to Section 217.386(b) or as a low usage unit pursuant to Section 217.388(c).~~

b) An owner or operator must submit an emissions averaging plan to the Agency by the applicable compliance date set forth in Section 217.392. The plan must include, but is not limited to:

1) The list of affected units included in the plan by unit identification number and permit number.

2) A sample calculation demonstrating compliance using the methodology provided in subsection (f) of this Section for both the ozone season and calendar year.

c) An owner or operator may amend an emissions averaging plan only once per calendar year. An amended plan must be submitted to the Agency by May 1 of the applicable calendar year. If an amended plan is not received by the Agency by May 1 of the applicable calendar year, the previous year's plan will be the applicable emissions averaging plan.

d) Notwithstanding subsection (c) of this Section, an owner or operator, and the buyer, if applicable~~:~~

~~1) Must~~ must submit an updated emissions averaging plan or plans to the Agency within 60 days, if a unit that is listed in an emissions averaging plan is sold or taken out of service.

~~2) May amend its emissions averaging plan to include another unit within 30 days of discovering that the unit no longer qualifies as an exempt unit pursuant to Section 217.386(b) or as a low usage unit pursuant to Section 217.388(c).~~

e) An owner or operator must:

1) Demonstrate compliance for both the ozone season (May 1 through September 30) and the calendar year (January 1 through December 31) by using the methodology and the units listed in the most recent emissions averaging plan submitted to the Agency pursuant to subsection (b) of this Section; the higher of the monitoring or test data determined pursuant to Section 217.394; and the actual hours of operation for the applicable control period;

2) Notify the Agency by October 31 following the ozone season, if compliance cannot be demonstrated for that ozone season; and

3) Submit to the Agency by January 31 following each calendar year, a compliance report containing the information required by Section 217.396(d)(4).

f) The total mass of actual NO_x emissions from the units listed in the emissions averaging plan must be equal to or less than the total mass of allowable NO_x emissions for those units for both the ozone season and calendar year. The following equation must be used to determine compliance:

$$N_{act} \leq N_{all}$$

Where:

$$N_{act} = \sum_{i=1}^{n} EM_{act(i)}$$

$$N_{all} = \sum_{i=1}^{n} EM_{all(i)}$$

N_{act} = Total sum of the actual NO_x mass emissions from units included in the averaging plan for each fuel used (lbs per ozone season and calendar year).

N_{all} = Total sum of the allowable NO_x mass emissions from units included in the averaging plan for each fuel used (lbs per ozone season and calendar year).

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in lbs for a unit as determined in subsection (g)(2), (g)(3), (g)(4), (g)(5),or (g)(6) of this Section.

$EM_{act(i)}$ = Total mass of actual NO_X emissions in lbs for a unit as determined in subsection (g)(1), (g)(3), (g)(5) or (h) of this Section.

i = Subscript denoting an individual unit and fuel used.

n = Number of different units in the averaging plan.

g) For each unit in the averaging plan, and each fuel used by a unit, determine actual and allowable NO_x emissions using the following equations, except as provided for in subsection (h) of this Section:

1) Actual emissions must be determined as follows:

$$EM_{act(i)} = E_{act(i)} \times H_i$$

$$E_{act(i)} = \frac{\sum_{j=1}^{m} C_{d(act(j))} x F_d x \left(\frac{20.9}{20.9 - \%O_{2d(j)}} \right)}{m}$$

2) Allowable emissions must be determined as follows:

$$EM_{all(i)} = E_{all(i)} \times H_i$$

$$E_{all(i)} = \frac{\sum_{j=1}^{m} C_{d(all)} x F_d x \left(\frac{20.9}{20.9 - \%O_{2d(j)}} \right)}{m}$$

Where:

$EM_{act(i)}$ = Total mass of actual NO_x emissions in lbs for a unit.

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in lbs for a unit.

E_{act} = Actual NO_x emission rate (lbs/mmBtu) calculated according to the above equation.

E_{all} = Allowable NO_x emission rate (lbs/mmBtu) calculated according to the above equation.

H = Heat input (mmBtu/ozone season or mmBtu/year) calculated from fuel flow meter and the heating value of the fuel used.

$C_{d(act)}$ = Actual concentration of NO_x in lb/dscf (ppmv x 1.194×10^{-7}) on a dry basis for the fuel used. Actual concentration is determined on each of the most recent test run or monitoring pass performed pursuant to Section 217.394, whichever is higher.

$C_{d(all)}$ = Allowable concentration of NO_x in lb/dscf (allowable emission limit in ppmv specified in Section 217.388(a), except as provided for in subsection (g)(6) of this Section, if applicable.
multiplied by 1.194×10^{-7}) on a dry basis for the fuel used.

F_d = The ratio of the gas volume of the products of combustion to the heat content of the fuel (dscf/mmBtu) as given in the table of F Factors included in 40 CFR 60, Appendix A, Method 19 or as determined using 40 CFR 60, Appendix A, Method 19.

$\%O_{2d}$ = Concentration of oxygen in effluent gas stream measured on a dry basis during each of the applicable test or monitoring runs used for determining emissions, as represented by a whole number percent, e.g., for 18.7%O_{2d}, 18.7 would be used.

i = Subscript denoting an individual unit and the fuel used.

j = Subscript denoting each test run or monitoring pass for an affected unit for a given fuel.

m = The number of test runs or monitoring passes for an affected unit using a given fuel.

3) For a replacement unit that is electric-powered, the allowable NO_x emissions from the affected unit that was replaced should be used in the averaging calculations and the actual NO_x emissions for the electric-powered replacement unit ($EM_{(i)act\ elec}$) are zero. Allowable NO_x emissions for the electric-powered replacement are calculated using the actual total bhp-hrs generated by the electric-powered replacement unit on an ozone season and on an annual basis multiplied by the allowable NO_x emission rate in lb/bhp-hr of the replaced unit.

The allowable mass of NO_x emissions from an electric-powered replacement unit ($EM_{(i)all\ elec}$) must be determined by multiplying the nameplate capacity of the unit by the hours operated during the ozone season or annually and the allowable NO_x emission rate of the replaced unit ($E_{all\ rep}$) in lb/mmBtu converted to lb/bhp-hr. For this calculation the following equation should be used:

$$EM_{all\ elec(i)} = bhp \times OP \times F \times E_{all\ rep(i)}$$

Where:

$EM_{all\ elec(i)}$ = Mass of allowable NO_x emissions from the electric-powered replacement unit in pounds per ozone season or calendar year.

Bhp = Nameplate capacity of the electric-powered replacement unit in brake-horsepower.

OP = Operating hours during the ozone season or calendar year.

F = Conversion factor of 0.0077 mmBtu/bhp-hr.

$E_{all\ rep(i)}$ = Allowable NO_X emission rate (lbs/mmBtu) of the replaced unit.

i = Subscript denoting an individual electric unit and the fuel used.

4) For a replacement unit that is not electric, the allowable NO_x emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be either:

A) Prior to the applicable compliance date for the replaced unit pursuant to Section 217.392, the higher of the actual NO_x emissions as determined by testing or monitoring data or the applicable uncontrolled NO_x emissions factor from Compilation of Air pollutant emission Factors: AP-42, Volume I: Stationary Point

and Area Sources, as incorporated by reference in Section 217.104 for the unit that was replaced; or

B) On and after the applicable compliance date for the replaced unit pursuant to Section 217.392, the applicable emissions concentration for the type of unit that replaced pursuant to Section 217.388(a).

5) For a unit that is replaced with purchased power, the allowable NO_x emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be the emissions concentration as set forth in Section 217.388(a) or subsection (g)(6) of this Section, when applicable, for the type of unit that was replaced. For owners or operators replacing units with purchased power, the annual hours of operations that must be used are the calendar year hours of operation for the unit that was shutdown averaged over the three-year period prior to the shutdown. The actual NO_x emissions for the units replaced by purchased power ($EM_{(i)act}$) are zero. These units may be included in any emissions averaging plan for no more than five years beginning with the calendar year that the replaced unit is shut down.

6) ~~For units that have a later compliance date,~~ For non-Appendix G units used in an emissions averaging plan, allowable emissions rate used in the above equations set forth in subsection (g)(2) of this Section must be~~:~~

~~A) Prior to the applicable compliance date pursuant to Section 217.392,~~ the higher of the actual NO_x emissions as determined by testing or monitoring data, or the applicable uncontrolled NO_x emissions factor from Compilation of Air Pollutant Emission Factors: AP-42, Volume I: Stationary Point and Areas Sources, as incorporated by reference in Section 217.104~~; and~~

~~B) On and after the units applicable compliance date pursuant to Section 217.392, the applicable emissions concentration for that type of unit pursuant to Section 217.388(a).~~

h) For units that use CEMS the data must show that the total mass of actual NO_x emissions determined pursuant to subsection (h)(1) of this Section is less than or equal to the allowable NO_x emissions calculated in accordance with the equations in subsections (f) and (h)(2) of this Section for both the ozone season and calendar year. The equations in subsection (g) of this Section will not apply.

1) The total mass of actual NO_x emissions in lbs for a unit (EM_{act}) must be the sum of the total mass of actual NO_x emissions from each affected unit using CEMS data collected in accordance with 40 CFR 60 or 75, or

alternate methodology that has been approved by the Agency or USEPA and included in a federally enforceable permit.

2) The allowable NO_x emissions must be determined as follows:

$$EM_{(all)} = \sum_{i=1}^{m} (Cd_i * flowstack_i * 1.194 x 10^{-7})$$

Where:

$EM_{all(i)}$ = Total mass of allowable NO_x emissions in lbs for a unit.
$Flow_i$ = Stack flow (dscf/hr) for a given stack.
Cd_i = Allowable concentration of NO_x (ppmv) specified in Section 217.388(a) of this subpart for a given stack. (1.194×10^{-7}) converts to lb/dscf).
j = subscript denoting each hour operation of a given unit.
m = Total number of hours of operation of a unit.
i = Subscript denoting an individual unit and the fuel used.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.392 Compliance

~~a) An owner or operator of an affected unit may not operate that unit unless it meets the applicable concentration limit in Section 217.388(a), or is included in an emissions averaging plan pursuant to Section 217.388(b), or meets the low usage requirements pursuant to Section 217.388(c), and complies with all other applicable requirements of this Subpart Q by the earliest applicable date listed below:~~

~~1)~~ On and after May 1, 2007, an owner or operator of an affected engine listed in Appendix G may not operate the affected engine unless the requirements of this Subpart Q are met or the affected engine is exempt pursuant to Section 217.386(b).~~;~~

~~2) On and after January 1, 2009, an owner or operator of an affected unit and that is located in Cook, DuPage, Aux Sable Township and Goose Lake Township in Grundy, Kane, Oswego Township in Kendall, Lake, McHenry, Will, Jersey, Madison, Monroe, Randolph Township in Randolph, or St. Clair County, and is not listed in Appendix G may not operate the affected unit unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b);~~

~~3) On and after January 1, 2011, an owner or operator of an affected engine with a nameplate capacity rated at 1500 bhp or more, and affected turbines~~

rated at 5 MW (6,702 bhp) or more that is not subject to subsection (a)(1) or (a)(2) of this Section, may not operate the affected unit unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b); or

4) On and after January 1, 2012, an owner or operator of an affected engine with a nameplate capacity rated at less than 1500 bhp or an affected turbine rated at less than 5 MW (6,702 bhp) that is not subject to subsection (a)(1), (a)(2) or (a)(3) of this Section, may not operate the affected engine or turbine unless the requirements of this Subpart Q are met or the affected unit is exempt pursuant to Section 217.386(b).

b) Owners and operators of an affected unit may use NO_x allowances to meet the compliance requirements in Section 217.388 as specified below. A NO_x allowance is defined as an allowance used to meet the requirements of a NO_x trading program administered by USEPA where one allowance is equal to one ton of NO_x emissions.

1) NO_x allowances may only be used under the following circumstances:

A) An anomalous or unforeseen operating scenario inconsistent with historical operations for a particular ozone season or calendar year that causes an emissions exceedance.

B) To achieve compliance no more than twice in any rolling five-year period.

C) For a unit that is not listed in Appendix G.

2) The owner or operator of the affected unit must surrender to the Agency one NO_x allowance for each ton or portion of a ton of NO_x by which actual emissions exceed allowed emissions. For noncompliance with a seasonal limit, a NO_x ozone season allowance must be used. For noncompliance with the emissions concentration limits in Section 217.388(a) or an annual limitation in an emissions averaging plan, only a NO_x annual allowance may be used.

3) The owner or operator must submit a report documenting the circumstances that required the use of NO_x allowances and identify what actions will be taken in subsequent years to address these circumstances and must transfer the NO_x allowances to the Agency's federal NO_x retirement account. The report and the transfer of allowances must be submitted by October 31 for exceedances during the ozone season and March 1 for exceedances of the emissions concentration or the annual emission averaging plan limits. The report must contain the NATS serial numbers of the NO_x allowances.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.394 Testing and Monitoring

a) An owner or operator ~~of an engine or turbine~~ must conduct an initial performance test pursuant to subsection (c)(1) or (c)(2) of this Section as follows:

1) By May 1, 2007, for affected engines listed in Appendix G. Performance tests must be conducted on units listed in Appendix G, even if the unit is included in an emissions averaging plan pursuant to Section 217.388(b).

2) By the applicable compliance date as set forth in Section 217.392, or within the first 876 hours of operation per calendar year, whichever is later~~:~~

~~A) For affected units not listed in Appendix G that operate more than 876 hours per calendar year; and~~

~~B) For~~ for units that are not affected units that are included in an emissions averaging plan and operate more than 876 hours per calendar year.

3) Once within the five-year period after the applicable compliance date as set forth in Section 217.392:

A) For affected units that operate fewer than 876 hours per calendar year; and

B) For units that are not affected units that are included in an emissions averaging plan and that operate fewer than 876 hours per calendar year

b) An owner or operator ~~of an engine or turbine~~ must conduct subsequent performance tests pursuant to subsection (c)(1) or (c)(2) of this Section as follows:

1) For affected engines listed in Appendix G and all units included in an emissions averaging plan, once every five years. Testing must be performed in the calendar year by May 1 or within 60 days of starting operation, whichever is later;

2) If the monitored data shows that the unit is not in compliance with the applicable emissions concentration or emissions averaging plan, the owner or operator must report the deviation to the Agency in writing within 30

days and conduct a performance test pursuant to subsection (c) of this Section within 90 days of the determination of noncompliance; and

3) When in the opinion of the Agency or USEPA, it is necessary to conduct testing to demonstrate compliance with Section 217.388, the owner or operator of a unit must, at his or her own expense, conduct the test in accordance with the applicable test methods and procedures specified in this Section 217.394 within 90 days of receipt of a notice to test from the Agency or USEPA.

c) Testing Procedures:

1) For an engine: The owner or operator must conduct a performance test using Method 7 or 7E of 40 CFR 60, Appendix A, as incorporated by reference in Section 217.104. Each compliance test must consist of three separate runs, each lasting a minimum of 60 minutes. NO_x emissions must be measured while the affected unit is operating at peak load. If the unit combusts more than one type of fuel (gaseous or liquid) including backup fuels, a separate performance test is required for each fuel.

2) For a turbine included in an emissions averaging plan: The owner operator must conduct a performance test using the applicable procedures and methods in 40 CFR 60.4400, as incorporated by reference in Section 217.104.

d) Monitoring: Except for those years in which a performance test is conducted pursuant to subsection (a) or (b) of this Section, the owner or operator of an affected unit or a unit included in an emissions averaging plan must monitor NO_x concentrations annually, once between January 1 and May 1 or within the first 876 hours of operation per calendar year, whichever is later. If annual operation is less than 876 hours per calendar year, each affected unit must be monitored at least once every five years. Monitoring must be performed as follows:

1) A portable NO_x monitor and utilizing method ASTM D6522-00, as incorporated by reference in Section 217.104, or a method approved by the Agency must be used. If the engine or turbine combusts both liquid or gaseous fuels as primary or backup fuels, separate monitoring is required for each fuel.

2) NO_x and O_2 concentrations measurements must be taken three times for a duration of at least 20 minutes. Monitoring must be done at highest achievable load. The concentrations from the three monitoring runs must be averaged to determine whether the affected unit is in compliance with the applicable emissions concentration or emissions averaging plan as specified in Section 217.388.

e) Instead of complying with the requirements of subsections (a), (b), (c) and (d) of this Section, an owner or operator may install and operate a CEMS on an affected unit that meets the applicable requirements of 40 CFR 60, subpart A, and Appendix B, incorporated by reference in Section 217.104, and complies with the quality assurance procedures specified in 40 CFR 60, Appendix F, or 40 CFR 75 as incorporated by reference in Section 217.104, or an alternate procedure as approved by the Agency or USEPA in a federally enforceable permit. The CEMS must be used to demonstrate compliance with the applicable emissions concentration or emissions averaging plan only on an ozone season and annual basis.

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Section 217.396 Recordkeeping and Reporting

a) Recordkeeping. The owner or operator of a unit included in an emissions averaging plan or an affected unit that is not exempt pursuant to Section 217.386(b) and is not subject to the low usage exemption of Section 217.388(c) must maintain records that demonstrate compliance with the requirements of this Subpart Q which include, but are not limited to:

1) Identification, type (e.g., lean-burn, gas-fired), and location of each unit.

2) Calendar date of the record.

3) The number of hours the unit operated on a monthly basis, and during each ozone season.

4) Type and quantity of the fuel used on a daily basis.

5) The results of all monitoring performed on the unit and reported deviations.

6) The results of all tests performed on the unit.

7) The plan for performing inspection and maintenance of the units, air pollution control equipment, and the applicable monitoring device pursuant to Section 217.388(d).

8) A log of inspections and maintenance performed on the unit's air emissions, monitoring device, and air pollution control device. These records must include, at a minimum, date, load levels and any manual adjustments along with the reason for the adjustment (e.g., air to fuel ratio, timing or other settings).

9) If complying with the emissions averaging plan provisions of Sections 217.388(b) and 217.390 copies of the calculations used to demonstrate compliance with the ozone season and annual control period limits, noncompliance reports for the ozone season, and ozone and annual control period compliance reports submitted to the Agency.

10) Identification of time periods for which operating conditions and pollutant data were not obtained by either the CEMS or alternate monitoring procedures including the reasons for not obtaining sufficient data and a description of corrective actions taken.

~~11) Any NO_x allowance reconciliation reports submitted pursuant to Section 217.392(e).~~

b) ~~The owner or operator of an affected unit that is complying with the low usage provisions of Section 217.388(c), must:~~

~~1) For each unit complying with Section 217.388(c)(1), maintain a record of the NO_x emissions for each calendar year; or~~

~~2) For each unit complying with Section 217.388(c)(2), maintain a record of bhp or MW hours operated each calendar year.~~

~~c)~~ The owner or operator of an affected unit or unit included in an emissions averaging plan must maintain the records required by subsections (a) and (b) of this Section for a period of five-years at the source at which the unit is located. The records must be made available to the Agency and USEPA upon request.

c~~d~~) Reporting requirements:

1) The owner or operator must notify the Agency in writing 30 days and five days prior to testing pursuant to Section 217.394(a) and:

A) If after the 30-days notice for an initially scheduled test is sent, there is a delay (e.g., due to operational problems) in conducting the performance test as scheduled, the owner or operator of the unit must notify the Agency as soon as possible of the delay in the original test date, either by providing at least seven days prior notice of the rescheduled date of the performance test, or by arranging a new test date with the Agency by mutual agreement;

B) Provide a testing protocol to the Agency 60 days prior to testing; and

C) Not later than 30 days after the completion of the test, submit the results of the test to the Agency.

2) Pursuant to the requirements for monitoring in Section 217.394(d), the owner or operator of the unit must report to the Agency any monitored exceedances of the applicable NO_x concentration from Section 217.388(a) or (b) within 30 days of performing the monitoring.

3) Within 90 days of permanently shutting down an affected unit or a unit included in an emissions averaging plan, the owner or operator of the unit must withdraw or amend the applicable permit to reflect that the unit is no longer in service.

4) If demonstrating compliance through an emissions averaging plan:

A) By October 31 following the applicable ozone season, the owner or operator must notify the Agency if he or she cannot demonstrate compliance for that ozone season; and

B) By January 30 following the applicable calendar year, the owner or operator must submit to the Agency a report that demonstrates the following:

i) For all units that are part of the emissions averaging plan, the total mass of allowable NO_x emissions for the ozone season and for the annual control period;

ii) The total mass of actual NO_x emissions for the ozone season and annual control period for each unit included in the averaging plan;

iii) The calculations that demonstrate that the total mass of actual NO_x emissions are less than the total mass of allowable NO_x emissions using equations in Sections 217.390(f) and (g); and

iv) The information required to determine the total mass of actual NO_x emissions and the calculations performed in subsection (d)(4)(B)(iii) of this Section.

5) If operating a CEMS, the owner or operator must submit an excess emissions and monitoring systems performance report in accordance with the requirements of 40 CFR 60.7(c) and 60.13, or 40 CFR 75 incorporated by reference in Section 217.104, or an alternate procedure approved by the Agency or USEPA and included in a federally enforceable permit.

~~6) If using NO_x allowances to comply with the requirements of Section 217.388, reconciliation reports as required by Section 217.392(b)(3).~~

(Source: Added at 31 Ill. Reg. _____, effective _____.)

Appendix G: Existing Reciprocating Internal Combustion Engines Affected by NO_x SIP Call

Plant ID	Point ID	Segment
ANR Pipeline Co. – Sandwich		
093802AAF	E-108	1
Natural Gas Pipeline Co. of America 8310		
027807AAC	730103540041	1
Natural Gas Pipeline Co. of America Sta 110		
073816AAA	851000140011	1
073816AAA	851000140012	2
073816AAA	851000140013	3
073816AAA	851000140014	4
073816AAA	851000140041	1
073816AAA	851000140051	1
Northern Illinois Gas Co. - Stor Stat 359		
113817AAA	730105440021	1
113817AAA	730105440031	1
113821AAA	730105430021	1
113821AAA	730105430051	1
Panhandle Eastern Pipe Line Co.-Glenarm		
167801AAA	87090038002	1
167801AAA	87090038004	1
167801AAA	87090038005	1
Panhandle Eastern Pipeline - Tuscola St		
041804AAC	73010573009	9
041804AAC	73010573010	10
041804AAC	73010573011	11
041804AAC	73010573012	12
041804AAC	73010573013	13
Panhandle Eastern Pipeline Co.		
149820AAB	7301057199G	3
149820AAB	7301057199I	1
149820AAB	7301057199J	1
149820AAB	7301057199K	1

Panhandle Eastern Pipeline Co.-Glenarm		
167801AAA	87090038001	1
Phoenix Chemical Co.		
085809AAA	730700330101	1
085809AAA	730700330102	2
085809AAA	730700330103	3

(Source: Added at 31 Ill. Reg. _____, effective _____.)

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 17, 2007, by a vote of 4-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board