

ILLINOIS POLLUTION CONTROL BOARD

March 17, 2011

IN THE MATTER OF: )  
)  
PROPOSED SITE-SPECIFIC NO<sub>x</sub> RULE ) R11-17  
AMENDMENT APPLICABLE TO SAINT- ) (Site-Specific Rulemaking - Air)  
GOBAIN CONTAINERS, INC. AT 35 ILL. )  
ADM. CODE 217.152(b) )

Proposed Rule. Second Notice.

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

The Board today proposes for second-notice review by the Joint Committee on Administrative Rules (JCAR) a site-specific amendment to Part 217 of its air pollution regulations, which addresses nitrogen oxides (NO<sub>x</sub>) emissions. *See* 35 Ill. Adm. Code 217.

On November 24, 2010, Saint-Gobain Containers, Inc. (SGCI) proposed a site-specific rule pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2008)) and Sections 102.202 and 102.210 of the Board's procedural rules (35 Ill. Adm. Code 102.202, 102.210). SGCI proposed to adjust the date by which a facility must obtain a legally enforceable order incorporating specified emission limitations and monitoring requirements in order to qualify for an alternative compliance deadline. *See* 35 Ill. Adm. Code 217.152(b). On December 2, 2010, the Board submitted the proposal to first-notice publication in the *Illinois Register* without commenting on its substantive merits. *See* 34 Ill. Adm. Code 19830-39 (Dec. 27, 2010).

In this opinion and order, the Board first provides the procedural history of this rulemaking docket before summarizing SGCI's proposal for a site-specific rule and public comment on it. The Board then discusses the issues raised, including economic reasonableness and technical feasibility, before reaching its conclusions and directing the Clerk to file the proposal with JCAR for second-notice review.

**PROCEDURAL HISTORY**

On November 24, 2010, SGCI filed a petition (Pet.) for site-specific rulemaking. Accompanying the petition were three exhibits (Exh. A-C). Also accompanying the petition were a motion for expedited review and a motion to waive the 200-signature requirement (Mot. Waive). *See* 415 ILCS 5/28(a) (2008); 35 Ill. Adm. Code 102.202(g), 102.410(b). In an order dated December 2, 2010, the Board accepted the petition for hearing and granted the motion for waiver of the 200-signature requirement. Although the Board denied the motion for expedited review, it submitted the proposal to first-notice publication without commenting on its substantive merits. *See* 34 Ill. Reg. 19830-39 (Dec. 27, 2010).

In an order dated December 10, 2010, the hearing officer scheduled a hearing for Thursday, February 3, 2010, in Chicago. The order also set a deadline of January 20, 2011, to pre-file testimony for the hearing. On January 18, 2011, the Board received pre-filed testimony from Mr. Ty Sibbitt on behalf of SGCI (Sibbitt Test.).

The hearing convened as scheduled on February 3, 2011, in Chicago. However, severe winter weather in the days preceding the hearing impeded travel and caused State offices, including the Board's, to close on Wednesday, February 2, 2011. Accordingly, the hearing officer convened the hearing on February 3, 2011 and continued it on the record to Thursday, February 17, 2011. The Board received the transcript of the proceedings on February 3, 2011, on February 7, 2011.

The hearing resumed as scheduled on February 17, 2010. During the continued hearing, the hearing officer admitted into the record a single exhibit, the pre-filed testimony of Mr. Sibbitt. The Board received the transcript of the continued hearing on February 17, 2011 (Tr.), on February 28, 2010. During the continued hearing, the hearing officer set a deadline of March 4, 2011, to file post-hearing comments.

As required by Section 27(b) of the Act (415 ILCS 5/27(b) (2008)) the Board requested in a letter dated December 3, 2010, that the Department of Commerce and Economic Opportunity (DCEO) determine by January 3, 2011, whether it would conduct an economic impact study of SGCI's rulemaking proposal. DCEO did not respond to the Board's request. During the hearing, the hearing officer noted the Board's request to DCEO and the absence of a response to it. Tr. at 10-11. Although the hearing officer afforded those present an opportunity to testify regarding the request, no participant offered testimony. *See id.* at 11.

On March 4, 2011, SGCI filed post-hearing comments (PC 1).

## **SGCI'S PROPOSAL**

### **Description of Facility and Area Involved**

SGCI owns and operates a glass manufacturing plant, including three natural gas-fired glass melting furnaces, at 13850 Cottage Grove Avenue in Dolton. Pet. at 2, 5. SGCI characterizes the plant's location as "an industrial area." *Id.* at 14. SGCI's process feeds "[s]and, soda ash, limestone, cullet, colorants, and refining agents" through the furnaces. *Id.* at 5 (citing Title V Permit No. 95090177). SGCI states that "[t]he furnaces are regenerative and continuously melt raw materials to make molten glass." *Id.*; *see* Sibbitt Test. at 1. SGCI states that "[t]he molten glass is refined and homogenized, formed into bottles, inspected, packed, and shipped to customers." Pet. at 5; *see* Sibbitt Test. at 1. SGCI employs more than 390 persons at its Dolton plant. Mot. Waive at 2.

SGCI states that the three glass-melting furnaces at the Dolton plant are subject to Subpart G of the Board's NO<sub>x</sub> regulations. Pet. at 2; *see* 35 Ill. Adm. Code 217.200 - 217.204. SGCI notes that the plant is located in an area classified under the National Ambient Air Quality Standards as nonattainment for fine particulate matter (PM<sub>2.5</sub>) and moderate nonattainment for 8-

hour ozone. Pet. at 14, citing 70 Fed. Reg. 944, 968 (Jan. 5, 2005) (particulates); 69 Fed. Reg. 23857 (Apr. 20, 2004) (ozone). SGCI expresses the understanding that the Chicago area has demonstrated attainment of the ozone and PM<sub>2.5</sub> standards and that the Illinois Environmental Protection Agency (Agency or IEPA) will soon seek re-designation from the United States Environmental Protection Agency (USEPA). Pet. at 14. SGCI argues that adoption of its proposal “should have no detrimental impact on the area’s attainment designations.” *Id.* SGCI also claims that installation of SCR equipment on its furnaces as required by a Consent Decree “will support continued attainment of the PM<sub>2.5</sub> and 8-hour ozone when compared to pollution controls otherwise required to meet the general limits in Subpart G.” *Id.*

### **Adoption of Section 217.152(b)**

The Board adopted Subpart G of Part 217, which addresses NO<sub>x</sub> emissions from glass melting furnaces, on August 20, 2009. Nitrogen Oxides Emissions from Various Source Categories: Amendments to 35 Ill. Adm. Code Parts 211 and 217 (NO<sub>x</sub> Rulemaking), R8-19 (Aug. 20, 2009); *see* 33 Ill. Reg. 13326-94 (Sept. 25, 2009) (effective August 31, 2009). SGCI states that the Board’s NO<sub>x</sub> emission limitations require glass melting furnaces located in ozone and PM<sub>2.5</sub> nonattainment areas “to meet a NO<sub>x</sub> emissions limitation of 5.0 lb/ton of glass produced, by January 1, 2012.” Pet. at 2, citing 35 Ill. Adm. Code 217.204; *see* Sibbitt Test. at 1-2. SGCI adds that “the rules contain an alternative compliance date for facilities with a legally enforceable order that, in this case, limits NO<sub>x</sub> emissions to less than 1.5 lb/ton as measured by a continuous emissions monitoring system” (CEMS).” Pet. at 2, citing 35 Ill. Adm. Code 217.152(b).

SGCI states that it “was very involved with IEPA in the Subpart G rulemaking.” Pet. at 8. After Agency testimony in docket R8-19, SGCI filed post-hearing comments favoring an exception to the Agency’s proposed compliance date “for entities that enter into an enforceable agreement with IEPA to install control technology that can achieve NO<sub>x</sub> emission rates significantly below the 5.0 lbs/ton limit pursuant to an enforceable schedule” extending beyond the original proposed compliance date. NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2); *see* Pet. at 5; Sibbitt Test. at 2. SGCI’s comments indicated that it was then “in the process of negotiating such an agreement with IEPA.” NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2); *see* Pet. at 2, 5; Sibbitt Test. at 2. Specifically, SGCI suggested addition of the following language as an exemption in the proposed Section 217.202:

[n]otwithstanding the compliance date set forth in Sections 217.155(b) and 217.204, a compliance date of December 31, 2014 shall apply when the owner or operator of a container glass melting furnace subject to Subpart F has executed a binding and enforceable agreement by December 31, 2009 with the State of Illinois that requires compliance with a NO<sub>x</sub> limit that is less than 30 percent of the emission limit in Section 217.204. NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2); *see id.* at 11 (Jan. 5, 2009) (transcript of hearing testimony by Mr. Sibbitt); *see also* Pet. at 6.

SGCI’s comment stated that, without such an exemption, it would be required to install a less effective control device to meet the 5.0 lb/ton standard “when substantially greater

reductions from the installation of alternative NO<sub>x</sub> control technology are currently being discussed with the State of Illinois.” NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2); *see* Pet. at 6. SGCI argued that “cannot afford to install” technology necessary to meet the interim compliance deadline and then install alternative technology before the end of 2014. NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2); *see* Pet. at 6. SGCI added that the earlier compliance deadline requires installation of six CEMS devices while the alternative technology may requires installation of as few as one CEMS. NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2); *see* Pet. at 6.

At a hearing on the underlying NO<sub>x</sub> rule, Mr. Sibbitt testified that SGCI was discussing the installation of alternative NO<sub>x</sub> control technology in the context of negotiating a consent decree with the State of Illinois and the Agency. NO<sub>x</sub> Rulemaking at 13 (Jan. 5, 2009) (transcript of Dec. 9, 2009 hearing); *see* Pet. at 6-7. Specifically, he indicated that SGCI was discussing installation of selective catalytic reduction (SCR) technology by the end of 2014, allowing SGCI “to get a much lower emissions rate.” NO<sub>x</sub> Rulemaking at 14 (Jan. 5, 2009); *see* Sibbitt Test. at 2. Mr. Sibbitt also indicated that SGCI would be installing CEMS with the SCR technology. NO<sub>x</sub> Rulemaking at 16; *see* Sibbitt Test. at 2. His testimony expressed hope that negotiations would culminate in a written agreement early in 2009. NO<sub>x</sub> Rulemaking at 14.

In comments submitted to the Board on January 20, 2009, SGCI renewed its request for an alternative compliance date. NO<sub>x</sub> Rulemaking (Jan. 20, 2009) (Public Comment #4); *see* Pet. at 7. Specifically, SGCI suggested addition of the following language to the proposed Section 217.152:

[n]otwithstanding subsection (a), (b), and (c) of this Section, compliance with the requirements of Subpart F<sup>1</sup> of this Part by an owner or operator of an emissions unit subject to Subpart F of this Part shall be extended until December 31, 2014, if such units are required to meet emissions limitations for NO<sub>x</sub> as measured using a continuous emissions monitoring system, and included within a legally enforceable order on or before December 31, 2009, whereby such emissions are less than 30 percent of the emissions limitations set forth under Section 217.204 of this Part. NO<sub>x</sub> Rulemaking (Jan. 20, 2009) (Public Comment #4); *see* Pet. at 7.

In testimony pre-filed on behalf of the Agency, Mr. Robert Kaleel stated that the Agency hoped to agree before a third hearing on revisions that would provide SGCI “the flexibility to comply with the more stringent requirement at the later date.” *Id.* (Jan. 20, 2009) (Agency testimony); *see* Pet. at 7.

On January 30, 2009, the Agency filed a motion to amend its rulemaking proposal. NO<sub>x</sub> Rulemaking (Jan. 30, 2009); *see* Pet. at 7. The Agency stated that negotiations with interested

---

<sup>1</sup> SGCI notes that, although the Agency originally proposed provisions applicable to glass melting furnaces as Subpart F, the Board adopted regulations for those sources in a re-designated Subpart G. Pet. at 7 n.2; *see* NO<sub>x</sub> Rulemaking (May 9, 2008) (original Agency proposal); *id.* (Aug. 20, 2009) (adopting regulations).

parties had resulted in agreement to revise various provisions. NO<sub>x</sub> Rulemaking (Jan. 30, 2009). Among those revisions, the Agency proposed to amend Section 217.152 to provide that

- a) Compliance with the requirements of Subparts D, E, F, G, H, and M by an owner or operator of an emission unit that is subject to Subpart D, E, F, G, H, or M is required beginning January 1, 2012.
- b) Notwithstanding subsection (a) of this Section, compliance with the requirements of Subpart F of this Part by an owner or operator of an emission unit subject to Subpart F of this Part shall be extended until December 31, 2014, if such units are required to meet emissions limitations for NO<sub>x</sub>, as measured using a continuous emissions monitoring system, and included within a legally enforceable order on or before December 31, 2009, whereby such emissions limitations are less than 30 percent of the emissions limitations set forth under Section 217.204 of Subpart F of this Part. *Id.* (Jan. 30, 2009); *see* Pet. at 7.

Soon after the Agency filed the motion to amend, Mr. Kaleel testified that, with regard to SGCI, the proposed amendments “resolve the outstanding issues or comments provided. . . . NO<sub>x</sub> Rulemaking at 13 (Feb. 3, 2009) (transcript of hearing); *see* Pet. at 8. The Board subsequently granted the Agency’s motion and amended the rulemaking proposal. NO<sub>x</sub> Rulemaking (Feb. 19, 2009); *see* Sibbitt Test. at 2. In proceeding to first notice, the Board included the Agency’s amendments of proposed Section 217.152. NO<sub>x</sub> Rulemaking at 30-31, 81 (May 7, 2009) (first-notice opinion and order); *see* Pet. at 8. The Board adopted this language without substantive revision. NO<sub>x</sub> Rulemaking at 32 (Aug. 20, 2009) (final opinion and order); *see* 33 Ill. Reg. 13326-94 (Sept. 25, 2009), Pet. at 8. Mr. Sibbitt testified that, at the time the Board adopted Subpart G, the participants in the rulemaking expected the court to enter a consent decree by December 31, 2009. Sibbitt Test. at 2.

Noting its involvement in the NO<sub>x</sub> rulemaking, SGCI argues that “[a]ll parties understood that the alternative provision at 35 Ill. Adm. Code 217.152(b) was included for SGCI and that the alternative compliance approach would provide more NO<sub>x</sub> emission reductions than the general compliance requirements of Subpart G.” Pet. at 8.

### Consent Decree

Mr. Sibbitt testified that, although the participants in the underlying NO<sub>x</sub> rulemaking expected the court to enter a consent decree by December 31, 2009, the “decree took much longer to finalize than anyone anticipated.” Sibbitt Test. at 3. He stated that the agreement addressed a number of pollutants in addition to NO<sub>x</sub> and numerous technologies. *Id.* He noted that negotiations included ten states and two local agencies and that the agreement ultimately “covered more than 30 glass melting furnaces at 15 facilities” owned by SGCI. *Id.* He stated that negotiations were a “significant effort” occurring over several months and culminating in a document more than 150 pages in length. *Id.* He added that SGCI was the first glass manufacturing company to develop a global consent decree with USEPA. *Id.*

SGCI states that, after the Board adopted Subpart G, the United States District Court for the Western District of Washington did not enter a Consent Decree until May 7, 2010. Pet. at 3, 8; *see id.*, Exh. A (Order to Enter Consent Decree); Sibbitt Test. at 4. SGCI states that, under the terms of the Consent Decree, “glass melting furnaces #2 and #3 at the Dolton plant are limited to NO<sub>x</sub> emissions of 6.2 lb/ton until December 31, 2014.” Pet. at 8, citing *id.*, Exh. B at 30 (Table 1 - Interim NO<sub>x</sub> Emission Limits). SGCI further states that, by December 31, 2014, it must install SCR devices at all three Dolton furnaces. Pet. at 8-9, citing *id.*, Exh. B at 33 (Table 2 - NO<sub>x</sub> Emission Controls and Compliance Schedule); *see* Sibbitt Test. at 4. The Consent Decree specifies regarding the Dolton facility that, “no later than the first Operating Date after the date specified in Table 2 [December 31, 2014], SGCI must commence operation of SCR to control emissions from all three Furnaces.” Pet., Exh. B at 39.

The Consent Decree further provides that the SCR at Dolton “must be designed for a removal efficiency of at least 90 percent.” Pet., Exh. B at 39-40; *see* Sibbitt Test. at 4. The decree also requires SGCI to “continuously operate the SCR according to the vendor recommendations in order to minimize emissions to the extent practicable taking into consideration ammonia slip.” Pet., Exh. B at 39-40. It further provides that, after December 31, 2014, “SGCI shall not emit more than 1.3 pounds of NO<sub>x</sub> per ton of glass produced on a rolling 30-day average.” *Id.* at 40; *see* Sibbitt Test. at 4. The Consent Decree also includes requirements for the installation, calibration, certification, maintenance, and operation of CEMS. *Id.* at 97-100; *see* Pet. at 9.

SGCI states that the Consent Decree’s NO<sub>x</sub> emission limit of 1.3 lb/ton of container glass produced is 26 percent of the generally applicable emission limit of 5.0 lb/ton. Pet. at 9, citing 35 Ill. Adm. Code 217.204(a). SGCI further states that the decree requires it to install and operate CEMS on each of its glass melting furnaces by December 31, 2014. Pet. at 9, citing *id.*, Exh. B at 97-100. SGCI also notes that the decree is binding upon it, as the court has retained jurisdiction to “enforce compliance with the terms and conditions . . . and to take any action necessary or appropriate for its interpretation, construction, execution, modification, or adjudication of disputes.” Pet. at 9, citing *id.*, Exh. B. at 148. SGCI claims that, “aside from the effective date [of December 31, 2009], the Consent Decree meets the requirements of an order necessary to activate the compliance date under 35 Ill. Adm. Code 217.152(b). . . .” Pet. at 10; *see* Sibbitt Test. at 4.

SGCI concludes that, “by changing the date by which the Consent Decree must be entered, the Board would allow SGCI to take advantage of the December 31, 2014 compliance date, as it originally intended.” Pet. at 10. SGCI states that “this change would have no substantive impact on the environment or the alternate date of compliance with Subpart G, which would not differ” from the date adopted by the Board in Subpart G. *Id.* at 3. SGCI argues that its proposed amendment “would merely allow SGCI to utilize the Consent Decree’s compliance date of December 31, 2014,” as the participants in the underlying rulemaking process had intended. *Id.* SGCI states that adoption of its proposal would “allow the eventual installation of NO<sub>x</sub> control technology with much greater effectiveness than otherwise required by Subpart G without first having to install less effective and potentially duplicative equipment.” *Id.* at 11; *see* Sibbitt Test. at 4-5.

Consequently, SGCI requests that the Board amend Section 217.152(b) as follows:

[n]otwithstanding subsection (a) of this Section, compliance with the requirements of Subpart G of this Part by an owner or operator of an emission unit subject to Subpart G of this Part shall be extended until December 31, 2014, if such units are required to meet emissions limitations for NO<sub>x</sub> as measured using a continuous emissions monitoring system, and included within a legally enforceable order on or before ~~December 31, 2009~~ May 7, 2010, whereby such emissions limitations are less than 30 percent of the emissions limitations set forth under Section 217.204. Pet. at 3; *see* 35 Ill. Adm. Code 217.152(b).

### **Communication with Agency**

On December 29, 2009, the Agency sent to SGCI a letter addressing the deadline for obtaining an enforceable order. Pet., Exh. C; *see* Sibbitt Test. at 3-4. The letter noted that, during the rulemaking process, the Agency and SGCI “believed that the global consent decree would be finalized by late summer 2009.” Pet., Exh. C at 3. The Agency acknowledged in its letter to SGCI that “there is no possibility that the global consent decree can be entered by the judge on or before December 31, 2009. Therefore, the global consent decree may not be legally enforceable on December 31, 2009, even though all parties to the global consent decree are in agreement as to its terms as executed.” *Id.*; *see* Sibbitt Test. at 3. The Agency’s letter stated that “[t]he fact that there will be a short period of time following December 31, 2009, before the global consent decree is entered will be taken into consideration, along with Illinois EPA’s commitment to support SGCI on an adjusted standard proceeding or site-specific rulemaking amending Section 217.152(b) to remove the December 31, 2009 deadline, and to enter another expeditious deadline sometime in the first half of 2010.” Pet., Exh. C. SGCI indicates that it wishes to replace the original deadline of December 31, 2009, to obtain an enforceable order with a deadline of May 7, 2010. Pet. at 3, 11.

### **PUBLIC COMMENT**

SGCI states that its proposal would adjust the deadline by which it must obtain a legally enforceable order incorporating specified emission limitations and monitoring requirements in order to qualify for an alternative compliance deadline. *See* PC 1 at 1. SGCI further states that unexpected delays in negotiating the consent decree contemplated by the Board’s regulations necessitate this adjustment. *Id.* at 1-2; *see* 35 Ill. Adm. Code 217.152(b). SGCI notes that the entities negotiating that consent decree included USEPA, the United States Department of Justice, ten state, and two local agencies. PC 1 at 2. SGCI states that, although it and the Agency had signed a consent decree by December 31, 2009, other parties had not yet done so. *Id.*

SGCI emphasizes that its proposal “does not extend the substantive compliance date . . . for installing pollution control and monitoring equipment that fall under such legally-enforceable order.” PC 1 at 2. SGCI argues that, because it must still comply with the NO<sub>x</sub> regulations by December 31, 2014, “the proposed amendment would provide the same environmental benefit as the existing rule.” *Id.*

SGCI also notes a recent development pertaining to Illinois' NO<sub>x</sub> regulations. PC 1 at 2. SGCI states that, “[b]ased on the most recent three years of monitoring data, which show attainment of the 1997 8-hour ozone standard in the Chicago area, USEPA approved Illinois’ request for a waiver from the NO<sub>x</sub> RACT [reasonably available control technology] requirements of the Clean Air Act in the Illinois portions” of the Chicago nonattainment area. *Id.*, citing 76 Fed. Reg. 9655 (Feb. 22, 2011). SGCI argues that USEPA determined that “additional reduction of NO<sub>x</sub> emissions in these areas would not contribute to attainment of the 1997 8-hour ozone NAAQS [national ambient air quality standards].” PC 1 at 2-3.

## **DISCUSSION**

### **Economic Impact Statement**

In a letter dated December 3, 2009, the Board requested that DCEO determine by January 3, 2011, whether it would conduct an economic impact study of the rulemaking proposal. *See* 415 ILCS 5/27(b) (2008). DCEO has not responded to this request. Although the hearing officer during the hearing sought testimony on the Board’s request to DCEO, no participant offered such testimony. Tr. at 10-11.

### **Environmental Consequences**

SGCI states that the December 31, 2014 compliance deadline in Section 217.152(b) prevents it from having to install “less effective pollution control equipment before installing more effective pollution control equipment required by the Consent Decree.” Pet. at 12; *see* 35 Ill. Adm. Code 217.152(b). SGCI argues that “[t]he long-term NO<sub>x</sub> emissions reductions required by the Consent Decree will far outweigh any short-term benefit of only installing technology required to meet the emissions limitations in Subpart G.” Pet. at 12. SGCI adds that, until December 31, 2014, the Consent Decree limits emissions from two of its furnaces to 6.23 lb/ton. *Id.*; *see id.*, Exh. B at 30 (Table 1 - Interim NO<sub>x</sub> Emission Limits).

SGCI states that it seeks only to change the date by which a legally enforceable order must be secured. Pet. at 11. SGCI emphasizes that its proposal maintains the Consent Decree’s deadline to install pollution control equipment. *Id.* SGCI argues that adopting its proposal “would have no environmental impact beyond that intended by the Board when adopting the existing rule.” *Id.*

Having reviewed the promulgation of Subpart G and the record in this proceeding, the Board concurs and finds that adoption of the site-specific relief sought by SGCI will not result in environmental consequences materially different from those considered in adopting the existing rule.

### **Economic Reasonableness**

SGCI argues that the Board weighed economic factors in the underlying rulemaking and found that the adopted NO<sub>x</sub> emission regulations were economically reasonable. *Id.*, citing NO<sub>x</sub>

Rulemaking (Aug. 20, 2009). SGCI further argues that, in adopting Subpart G, the Board intended that the December 31, 2014 compliance deadline apply to SGCI because of its unique circumstances. Pet. at 15, 16. SGCI claims that its proposal would have the same economic impact as the adopted rule: allowing “SGCI to take advantage of a compliance date of December 31, 2014 for installing certain pollution control and monitoring equipment.” *Id.* at 16.

SGCI claims that, if the Board does not adopt its proposal, it will have to install less effective pollution control equipment by January 1, 2012, to comply with Section 217.204 and then install more effective equipment by December 31, 2014, to comply with the Consent Decree. Pet. at 13; *see* 35 Ill. Adm. Code 217.204. SGCI also argues that, although the less effective equipment would require installation of six CEMS devices, the more effective equipment may require only one CEMS. Pet. at 13, citing NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2).

SGCI states that it cannot afford to install equipment to meet the January 1, 2012 deadline and then also install SCR by December 31, 2014. Pet. at 13, 15, citing NO<sub>x</sub> Rulemaking (Nov. 25, 2008) (Public Comment #2). SGCI claims that adoption of its site-specific proposal would allow it “to install more effective pollution control equipment in the future without the inefficient use of resources to meet interim, less stringent limitations.” Pet. at 13. SGCI adds that adoption would allow it “to efficiently use its resources for the best emission control program over the long term.” *Id.* at 16; *see* Sibbitt Test. at 5.

SGCI concludes that “[i]t would not be economically reasonable to impose interim requirements on SGCI that would require the installation of temporary and duplicate equipment, only to have SGCI later remove the equipment during the installation of more effective equipment soon after.” Pet. at 15. SGCI characterizes such a result as imposition of “an undue burden.” *Id.*

In adopting Subpart G, including an alternative compliance deadline addressing SGCI’s unusual circumstances, the Board concluded that it is economically reasonable. Having reviewed the promulgation of Subpart G and the record in this proceeding, the Board concurs that the economic reasonableness of the site-specific relief sought by SGCI is not materially different from the reasonableness of the existing rule.

### **Technical Feasibility**

SGCI stresses that its proposal would maintain the December 31, 2014 compliance deadline at Section 217.152(b). Pet. at 12, 17; *see* 35 Ill. Adm. Code 217.152(b). SGCI states that its proposal seeks only to adjust the timing of a condition to qualify for that compliance deadline. Pet. at 16. SGCI indicates that, if the date for obtaining a legally enforceable order is extended to May 7, 2010, it will still be required to “install SCR, which is more effective at controlling NO<sub>x</sub> than the emission reductions contemplated by Subpart G’s general 5 lb/ton limit.” *Id.* at 12. SGCI suggests that technical feasibility of its proposal is the same as the original substantive regulations. *See id.*

In adopting Subpart G, which includes Section 217.152(b), the Board concluded that it is technologically feasible. Having reviewed the promulgation of Subpart G and the record in this proceeding, the Board concurs that the feasibility of the site-specific relief sought by SGCI does not differ materially from the feasibility of the existing rule.

### **Board Findings**

As addressed in the preceding subsections of this opinion, the Board has reviewed the promulgation of Subpart G and the record in this proceeding. The Board finds that the site-specific relief sought by SGCI is economically reasonable and technically feasible and that it will not result in environmental consequences materially different from those considered in adopting the existing rule. Consequently, the Board concludes below to submit the proposed amendment of Section 217.152(b) without substantive amendment to second-notice review by JCAR. The Board's second-notice proposal includes non-substantive changes made by JCAR.

### **CONCLUSION**

In accepting SGCI's proposal for hearing, the Board submitted the proposal to first-notice publication without commenting on its substantive merits. In this opinion, the Board has reviewed the rulemaking record and issues raised in it. The Board found above that the proposal is both economically reasonable and technically feasible and that it will not result in environmental consequences materially different from those considered in adopting the existing rule. The Board finds that the record supports proceeding to second-notice review without substantive amendment of the original proposal. In its order below, the Board directs the Clerk to file the proposed amendments with JCAR for second-notice review

### **ORDER**

The Board directs the Clerk to file the following proposed amendments with the Joint Committee on Administrative Rules for second-notice review. Proposed additions to Part 217 are underlined, and proposed deletions from that Part appear stricken.

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 (Repealed)

#### SUBPART C: EXISTING FUEL COMBUSTION EMISSION UNITS

Section	
217.141	Existing Emission Units in Major Metropolitan Areas

#### SUBPART D: NO<sub>x</sub> GENERAL REQUIREMENTS

Section	
217.150	Applicability
217.152	Compliance Date
217.154	Performance Testing
217.155	Initial Compliance Certification
217.156	Recordkeeping and Reporting
217.157	Testing and Monitoring
217.158	Emissions Averaging Plans

#### SUBPART E: INDUSTRIAL BOILERS

Section	
217.160	Applicability
217.162	Exemptions
217.164	Emissions Limitations
217.165	Combination of Fuels
217.166	Methods and Procedures for Combustion Tuning

#### SUBPART F: PROCESS HEATERS

Section	
217.180	Applicability
217.182	Exemptions
217.184	Emissions Limitations
217.185	Combination of Fuels
217.186	Methods and Procedures for Combustion Tuning

#### SUBPART G: GLASS MELTING FURNANCES

Section	
217.200	Applicability
217.202	Exemptions
217.204	Emissions Limitations

#### SUBPART H: CEMENT AND LIME KILNS

Section	
217.220	Applicability
217.222	Exemptions
217.224	Emissions Limitations

#### SUBPART I: IRON AND STEEL AND ALUMINUM MANUFACTURING

Section	
217.240	Applicability
217.242	Exemptions
217.244	Emissions Limitations

#### SUBPART K: PROCESS EMISSION SOURCES

Section	
217.301	Industrial Processes

#### SUBPART M: ELECTRICAL GENERATING UNITS

Section	
217.340	Applicability
217.342	Exemptions
217.344	Emissions Limitations
217.345	Combination of Fuels

#### 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
217.392	Compliance
217.394	Testing and Monitoring

217.396 Recordkeeping and Reporting

SUBPART T: CEMENT KILNS

Section

217.400 Applicability  
 217.402 Control Requirements  
 217.404 Testing  
 217.406 Monitoring  
 217.408 Reporting  
 217.410 Recordkeeping

SUBPART U: NO<sub>x</sub> CONTROL AND TRADING PROGRAM FOR  
 SPECIFIED NO<sub>x</sub> GENERATING UNITS

Section

217.450 Purpose  
 217.452 Severability  
 217.454 Applicability  
 217.456 Compliance Requirements  
 217.458 Permitting Requirements  
 217.460 Subpart U NO<sub>x</sub> Trading Budget  
 217.462 Methodology for Obtaining NO<sub>x</sub> Allocations  
 217.464 Methodology for Determining NO<sub>x</sub> Allowances from the New Source Set-Aside  
 217.466 NO<sub>x</sub> Allocations Procedure for Subpart U Budget Units  
 217.468 New Source Set-Asides for "New" Budget Units  
 217.470 Early Reduction Credits (ERCs) for Budget Units  
 217.472 Low-Emitter Requirements  
 217.474 Opt-In Units  
 217.476 Opt-In Process  
 217.478 Opt-In Budget Units: Withdrawal from NO<sub>x</sub> Trading Program  
 217.480 Opt-In Units: Change in Regulatory Status  
 217.482 Allowance Allocations to Opt-In Budget Units

SUBPART V: ELECTRIC POWER GENERATION

Section

217.521 Lake of Egypt Power Plant  
 217.700 Purpose  
 217.702 Severability  
 217.704 Applicability  
 217.706 Emission Limitations  
 217.708 NO<sub>x</sub> Averaging  
 217.710 Monitoring  
 217.712 Reporting and Recordkeeping

SUBPART W: NO<sub>x</sub> TRADING PROGRAM FOR

## ELECTRICAL GENERATING UNITS

Section	Purpose
217.750	Purpose
217.751	Sunset Provisions
217.752	Severability
217.754	Applicability
217.756	Compliance Requirements
217.758	Permitting Requirements
217.760	NO <sub>x</sub> Trading Budget
217.762	Methodology for Calculating NO <sub>x</sub> Allocations for Budget Electrical Generating Units (EGUs)
217.764	NO <sub>x</sub> Allocations for Budget EGUs
217.768	New Source Set-Asides for "New" Budget EGUs
217.770	Early Reduction Credits for Budget EGUs
217.774	Opt-In Units
217.776	Opt-In Process
217.778	Budget Opt-In Units: Withdrawal from NO <sub>x</sub> Trading Program
217.780	Opt-In Units: Change in Regulatory Status
217.782	Allowance Allocations to Budget Opt-In Units

SUBPART X: VOLUNTARY NO<sub>x</sub> EMISSIONS REDUCTION PROGRAM

Section	Purpose
217.800	Purpose
217.805	Emission Unit Eligibility
217.810	Participation Requirements
217.815	NO <sub>x</sub> Emission Reductions and the Subpart X NO <sub>x</sub> Trading Budget
217.820	Baseline Emissions Determination
217.825	Calculation of Creditable NO <sub>x</sub> Emission Reductions
217.830	Limitations on NO <sub>x</sub> Emission Reductions
217.835	NO <sub>x</sub> Emission Reduction Proposal
217.840	Agency Action
217.845	Emissions Determination Methods
217.850	Emissions Monitoring
217.855	Reporting
217.860	Recordkeeping
217.865	Enforcement
217.APPENDIX A	Rule into Section Table
217.APPENDIX B	Section into Rule Table
217.APPENDIX C	Compliance Dates
217.APPENDIX D	Non-Electrical Generating Units
217.APPENDIX E	Large Non-Electrical Generating Units
217.APPENDIX F	Allowances for Electrical Generating Units

- 217.APPENDIX G Existing Reciprocating Internal Combustion Engines Affected by the NO<sub>x</sub> SIP Call
- 217.APPENDIX H Compliance Dates for Certain Emissions Units at Petroleum Refineries

AUTHORITY: Implementing Sections 10 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27 and 28 (2008)].

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 R07-18 at 31 Ill. Reg. 14254, effective September 25, 2007; amended in R07-19 at 33 Ill. Reg. 11999, effective August 6, 2009; amended in R08-19 at 33 Ill. Reg. 13345, effective August 31, 2009; amended in R09-20 at 33 Ill. Reg. 15754, effective November 2, 2009; amended in R11-17 at 35 Ill. Reg.\_\_\_\_\_, effective \_\_\_\_\_.

#### SUBPART D: NO<sub>x</sub> GENERAL REQUIREMENT

##### Section 217.152 Compliance Date

- a) Compliance with the requirements of Subparts E, F, G, H, I and M by an owner or operator of an emission unit that is subject to any of those Subparts is required beginning January 1, 2012.
- b) Notwithstanding subsection (a) of this Section, compliance with the requirements of Subpart G of this Part by an owner or operator of an emission unit subject to Subpart G of this Part shall be extended until December 31, 2014, if the unit ~~is such units are~~ required to meet emissions limitations for NO<sub>x</sub>, as measured using a continuous emissions monitoring system, and included within a legally enforceable order on or before ~~December 31, 2009~~ May 7, 2010, whereby ~~the such~~ emissions limitations are less than 30 percent of the emissions limitations set forth under Section 217.204.
- c) Notwithstanding subsection (a) of this Section, the owner or operator of emission units subject to Subpart E or F of this Part and located at a petroleum refinery must comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, for those emission units beginning January 1, 2012, except that the owner or operator of emission units listed in Appendix H must comply with the requirements of this Subpart, including the option of demonstrating compliance with the applicable Subpart through an emissions averaging plan under Section 217.158 and Subpart E or F of this Part, as applicable, for the listed emission units beginning on the dates set forth in Appendix H. With Agency approval, the owner or operator of emission units listed in Appendix H may elect to comply with the requirements of this Subpart and Subpart E or F of this Part, as applicable, by reducing the emissions of emission units other than those listed in

Appendix H, provided that the emissions limitations of such other emission units are equal to or more stringent than the applicable emissions limitations set forth in Subpart E or F of this Part, as applicable, by the dates set forth in Appendix H.

(Source: Amended at 35 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 opinion and order on March 17, 2011, by a vote of 5-0.

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

---

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board