



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

May 27, 2011

POLLUTION CONTROL BOARD
JOHN THERRIAULT ASSISTANT CLERK
100 W RANDOLPH ST, STE 11-500
CHICAGO, IL 60601

RECEIVED
CLERK'S OFFICE
JUN 01 2011
STATE OF ILLINOIS
Pollution Control Board

Dear JOHN THERRIAULT ASSISTANT CLERK

Your rules Listed below met our codification standards and have been published in Volume 35, Issue 23 of the Illinois Register, dated 6/3/2011.

PROPOSED RULES

Nitrogen Oxides Emissions

35 Ill. Adm. Code 217

8363

Point of Contact: Nancy Miller

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

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NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Nitrogen Oxides Emissions
- 2) Code citation: 35 Ill. Adm. Code 217
- 3) Section Numbers: Proposed Action:

217.451	New
217.454	Amend
217.456	Amend
- 4) Statutory authority: Implementing Section 10, and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/10, 27, 28].
- 5) A complete description of the subjects and issues involved: This proposal will add a provision sunsetting the Nitrogen Oxides (NO_x) SIP Call requirements as set forth in Subpart U that apply to Non-electric generating units (Non-EGUs). Beginning with the 2009 control period (May 1 through September 30), Non-EGUs will no longer be required to hold NO_x allowances in an amount equal to their seasonal NO_x emissions. Such sources will continue to be required to monitor, record and report seasonal NO_x emissions.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: No published study or research report was used in developing the proposed amendments to 35 Ill. Adm. Code 217.
- 7) Will this proposed rule replace emergency rules currently in effect? No.
- 8) Does this rulemaking contain an automatic repeal date? No.
- 9) Does this proposed rule contain incorporations by reference? No.
- 10) Are there any other amendments pending on this Part? No.
- 11) Statement of statewide policy objectives: This proposed rule does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b) (2008)].

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- 12) Time, place and manner in which interested persons may comment on this proposed rulemaking:

The Board will accept written public comment on this proposal for a period of 45 days after the date of this publication. Comments should reference docket R11-08 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Address all questions to Daniel Robertson at 312-814-6931.

Interested persons may obtain copies of the Board's opinion and order by downloading them from the Board's Web site at www.ipcb.state.il.us or by calling the Clerk's office at 312-814-3620.

- 13) Initial regulatory flexibility analysis:
- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: Any small business, small municipalities, or not-for-profit corporations that are subject to the NO_x Trading Program for non-electric generating units could be affected by the proposed amendments.
 - B) Reporting, bookkeeping or other procedures required for compliance: None.
 - C) Types of professional skills necessary for compliance: None.
- 14) Regulatory Agenda on which this rulemaking was summarized. State reasons for this rulemaking if it was not included in either of the two most recent regulatory agendas. 34 *Ill. Reg.* 8696, July 2, 2010.

The full text of the proposed amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

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_x 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

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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

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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_x CONTROL AND TRADING PROGRAM FOR
SPECIFIED NO_x GENERATING UNITS

Section

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217.450	Purpose
<u>217.451</u>	<u>Sunset Provisions</u>
217.452	Severability
217.454	Applicability
217.456	Compliance Requirements
217.458	Permitting Requirements
217.460	Subpart U NO _x Trading Budget
217.462	Methodology for Obtaining NO _x Allocations
217.464	Methodology for Determining NO _x Allowances from the New Source Set-Aside
217.466	NO _x 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 _x 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

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

SUBPART W: NO_x TRADING PROGRAM FOR
ELECTRICAL GENERATING UNITS

Section	
217.750	Purpose
217.751	Sunset Provisions
217.752	Severability
217.754	Applicability
217.756	Compliance Requirements

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217.758	Permitting Requirements
217.760	NO _x Trading Budget
217.762	Methodology for Calculating NO _x Allocations for Budget Electrical Generating Units (EGUs)
217.764	NO _x 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 _x Trading Program
217.780	Opt-In Units: Change in Regulatory Status
217.782	Allowance Allocations to Budget Opt-In Units

SUBPART X: VOLUNTARY NO_x EMISSIONS REDUCTION PROGRAM

Section	
217.800	Purpose
217.805	Emission Unit Eligibility
217.810	Participation Requirements
217.815	NO _x Emission Reductions and the Subpart X NO _x Trading Budget
217.820	Baseline Emissions Determination
217.825	Calculation of Creditable NO _x Emission Reductions
217.830	Limitations on NO _x Emission Reductions
217.835	NO _x 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 _x SIP Call
217.APPENDIX H	Compliance Dates for Certain Emissions Units at Petroleum Refineries

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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 R07-18 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. 6770, effective April 22, 2011; amended in R11-08 at 35 Ill. Reg. _____, effective _____.

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

Section 217.451 Sunset Provisions

Except for Sections 217.454(a) and (b) (Applicability), and 217.456(c), (e)(1)(B) through (D), and (e)(2) (Monitoring, Recordkeeping and Reporting), the provisions of this Subpart U shall not apply for any control period in 2009 or thereafter. Compliance for 2009 and after is required for the Sections listed herein. Noncompliance with the provisions of this Subpart that occurred prior to 2009 is subject to the applicable provisions of this Subpart.

(Source: Added at 35 Ill. Reg. _____, effective _____)

Section 217.454 Applicability

- a) This Subpart applies to any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system, with a maximum design heat input greater than 250 mmbtu/hr and that is:
 - 1) A unit listed in Appendix E of this Subpart, irrespective of any subsequent changes in ownership, unit designation, or name of the unit; or
 - 2) A unit not listed in Appendix E of this Subpart that:
 - A) At no time serves a generator producing electricity for sale;

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- B) At any time serves a generator producing electricity for sale, if such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. Fifty percent of a unit's potential electrical output capacity shall be determined by multiplying the unit's maximum design heat input by 0.0488 MWe/mmbtu. If the size of the generator is smaller than this calculated number, the unit is subject to the provisions of this Subpart, but if the size of the generator is greater than this calculated number, the unit is subject to the provisions of Subpart W of this Part;
 - C) Is part of any source, as that term is defined in 35 Ill. Adm. Code Section 211.6130, listed in Appendix E of this Part; or
 - D) Is a unit subject to Subpart W of this Part (excluding any unit listed in Appendix F of this Part, regardless of any change in ownership or any change of operator), and the owner or operator makes a permanent election, at the time of applying for a budget permit pursuant to this Part, to subject the unit to the requirements of this Subpart rather than Subpart W of this Part. Any unit for which such an election is made will not receive an allocation from the Subpart U or Subpart W NO_x Trading Budget.
- b) Those units that meet the above criteria ~~and are subject to the NO_x Trading Program emissions limitations contained in this Subpart~~ are budget units.
 - c) Low-emitter status: Notwithstanding subsection (a) of this Section, the owner or operator of a budget unit subject to the requirements of subsection (a) of this Section may elect low-emitter status by obtaining a permit with federally enforceable conditions that meet the requirements of Section 217.472(a). Starting with the effective date of such permit, the unit shall be subject only to the requirements of Section 217.472.
 - d) The owner or operator of any budget unit not listed in Appendix E of this Part but subject to this Subpart shall not receive an allocation of NO_x allowances from the Subpart U or Subpart W NO_x Trading Budget, except for any allowance from the new source set-aside in accordance with Section 217.468 of this Subpart. Such unit must acquire NO_x allowances in an amount not less than the NO_x emissions from such budget unit during the control period (rounded to the nearest whole

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ton) in accordance with the federal NO_x Trading Program, Subpart X of this Part or pursuant to a permanent transfer of NO_x allocations pursuant to Section 217.462(b) of this Subpart.

- e) Notwithstanding any other provisions of this Subpart, a source and units at the source subject to the provisions of subsection (a) of this Section will become subject to this Subpart on *the first day of the control season subsequent to the calendar year in which all of the other states subject to the provisions of the NO_x SIP Call (63 Fed. Reg. 57355 (October 27, 1998)) that are located in USEPA Region V or are that contiguous to Illinois have adopted regulations to implement NO_x trading programs and other required reductions of NO_x emissions pursuant to the NO_x SIP Call, and such regulations have received final approval by USEPA as part of the respective states' SIPs for ozone, or a final FIP for ozone promulgated by USEPA is effective.* [415 ILCS 5/9.9(f)]

(Source: Amended at 35 Ill. Reg. ____, effective _____)

Section 217.456 Compliance Requirements

All budget units subject to the requirements of this Subpart must comply with the following:

- a) The requirements of this Subpart and 40 CFR 96, excluding 40 CFR 96.4(b), 96.55(c) and subparts C, E, and I, as incorporated by reference in Section 217.104 of this Part. To the extent that this Subpart contains provisions which are inconsistent with any provisions of 40 CFR 96, the owner or operator of budget units subject to this Subpart shall comply with the provisions of this Subpart in lieu of those provisions which were incorporated by reference.
- b) Budget permit requirements:
- 1) The owner or operator of each source with one or more budget units at the source subject to this Subpart must submit a complete permit application for a budget permit in accordance with the provisions of Section 217.458(a)(4), (a)(5) or (a)(6), as applicable, to be issued by the Agency with federally enforceable conditions covering the NO_x Trading Program (budget permit), and that complies with the requirements of Section 217.458 of this Subpart.
 - 2) The owner or operator of one or more budget units subject to this Subpart must operate each such budget unit in compliance with such budget permit

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or complete budget permit application, as applicable.

- 3) The owner or operator of one or more budget units subject to this Subpart, at the time of filing an application for a permit under this Section, must submit a complete application for either a permit incorporating a source-wide overdraft account (as such term is defined in 40 CFR 96.2), or a permit incorporating unit specific compliance accounts for each budget unit at the source subject to this Subpart. Such election shall be at the sole discretion of the owner or operator of the source and the Agency shall incorporate such election into a permit issued to the source pursuant to this Subpart.
- c) Monitoring requirements:
- 1) For budget units subject to the requirements of this Subpart, and which commence operation on and after January 1, 2000, the owner or operator of each such budget unit at the source must comply with the monitoring requirements of 40 CFR 96, subpart H. The account representative of each such budget unit at the source shall comply with those sections of the monitoring requirements of 40 CFR 96, subpart H, applicable to an account representative.
 - 2) The compliance of each budget unit subject to the requirements of subsection (c)(1) or subsection (c)(3)(A) of this Section with the control period NO_x emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart H.
 - 3) For budget units which commenced operation prior to January 1, 2000:
 - A) The owner or operator of each such budget unit at the source must comply with the requirements of 40 CFR 96, subpart H; or
 - B) If the monitoring requirements of 40 CFR 96, subpart H, are demonstrated by the source to be technically infeasible as applied to a budget unit subject to the requirements of this Subpart, the owner or operator of such budget unit may monitor by an alternative monitoring procedure for the budget unit approved by the Agency and the Administrator of USEPA pursuant to the provisions of 40 CFR 75, subpart E. Such alternative monitoring

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procedures must be contained as federally enforceable conditions in the unit's permit.

- 4) The compliance of each budget unit subject to the requirements of subsection (c)(3)(B) of this Section shall be determined by the emissions measurements recorded and reported in accordance with the federally enforceable conditions in the budget unit's permit addressing monitoring as required by subsection (c)(3)(B) of this Section.
- d) Allowance requirements:
- 1) As of November 30 of each year, the allowance transfer deadline, the account representative of each source subject to the requirements of this Subpart must hold allowances available for compliance deductions under 40 CFR 96.54 for each budget unit at the source subject to this Subpart in the budget unit's compliance accounts, or the source's overdraft account. The number of allowances held in these accounts shall not be less than the total NO_x emissions for the control period (rounded to the nearest whole ton), as determined in accordance with subsection (c) of this Section, plus any number of allowances necessary to account for actual utilization (e.g., for testing, start-up, malfunction, and shut down) under 40 CFR 96.42(e) for all budget units at the source subject to this Subpart. Compliance with this provision shall be demonstrated if, as of the allowance transfer deadline, the sum of the allowances available for compliance deductions for all budget units at the source subject to this Subpart is equal to or greater than the total NO_x emissions (rounded to the nearest whole ton) from all budget units at the source subject to this Subpart.
 - 2) Allowances shall be held in, deducted from, or transferred among allowance accounts in accordance with this Subpart and 40 CFR 96, subparts F and G.
 - 3) Each ton of NO_x emitted by a source with one or more budget units subject to this Subpart in any control period in excess of the NO_x allowances held by the owner or operator for each budget unit at the source subject to this Subpart for each control period shall constitute a separate violation of this Subpart and the Act.
 - 4) In order to comply with the requirements of subsection (d)(1) of this Section, an allowance may not be utilized for a control period in a year

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- prior to the year for which the allowance was allocated.
- 5) An allowance allocated by the Agency or USEPA under the NO_x Trading Program is a limited authorization to emit one ton of NO_x. No provision of the NO_x Trading Program, any permit issued or permit application submitted pursuant to this Subpart, or an exemption under 40 CFR 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit this authorization.
 - 6) An allowance allocated by the Agency or USEPA under the NO_x Trading Program or pursuant to this Subpart does not constitute a property right.
 - 7) Upon recordation by USEPA under 40 CFR 96, subpart F or G, every allocation, transfer, or deduction of an allowance to or from a budget unit's compliance account or to or from the source's general or overdraft account where the budget unit is located is deemed to amend automatically and become a part of any budget permit of the budget unit. This automatic amendment of the budget permit shall occur by operation of law and will not require any further review.
- e) Recordkeeping and reporting requirements:
- 1) Unless otherwise provided, the owner or operator of a source subject to the requirements of this Subpart must keep at the source each of the documents listed in subsections (e)(1)(A) through (e)(1)(D) of this Section for a period of 5 years from the date the document is created. This period may be extended for cause at any time prior to the end of 5 years in writing by the Agency or USEPA.
 - A) The account certificate of representation for the account representative for the source and each budget unit at the source subject to the requirements of this Subpart and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 40 CFR 96.13, provided that the certificate and such supporting documents must be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the account representative.
 - B) All emissions monitoring information, in accordance with subsection (c) of this Section, provided that to the extent that 40

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CFR 96, subpart H, provides for a three-year period for recordkeeping, the three-year period shall apply.

- C) Copies of all reports, ~~compliance certifications,~~ and other submissions and all records made or required under this Subpart ~~of the NO_x Trading Program~~ or documents necessary to demonstrate compliance with the requirements of this Subpart ~~or the NO_x Trading Program.~~
 - D) Copies of all documents ~~used to complete a budget permit application~~ and any other submission under this Subpart ~~or under the NO_x Trading Program.~~
- 2) The account representative of a source and each budget unit at the source subject to the requirements of this Subpart must submit to the Agency and USEPA the reports ~~and compliance certifications~~ required under this Subpart ~~and the NO_x Trading Program~~, including those under 40 CFR 96, subparts ~~D~~ and H.
- f) Liability:
- 1) No revision of a budget permit shall excuse any violation of the requirements of the NO_x Trading Program or this Subpart that occurs prior to the date that the revision under such budget permit takes effect.
 - 2) Each budget source and each budget unit at the source shall meet the requirements of the NO_x Trading Program.
 - 3) Any provision of this Subpart or the NO_x Trading Program that applies to a source subject to the requirements of this Subpart (including a provision applicable to the account representative of the source) shall also apply to the owner and operator of such source and to the owner and operator of the budget units subject to the requirements of this Subpart at the source.
 - 4) Any provision of this Subpart or the NO_x Trading Program that applies to a budget unit subject to the requirements of this Subpart (including a provision applicable to the account representative of such budget unit) shall also apply to the owner and operator of such budget unit. Except with regard to the requirements applicable to budget units with a common

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stack under 40 CFR 96, subpart H, the owner and operator and the account representative of one budget unit shall not be liable for any violation by any other budget unit of which they are not an owner or operator or the account representative and that is located at a source of which they are not an owner or operator or the account representative.

- 5) Excess emissions requirements: The account representative of a source that has excess emissions in any control period shall surrender the allowances as required for deduction under 40 CFR 96.54(d)(1).
- 6) The owner or operator of a budget EGU that has excess emissions in any control period shall pay any fine, penalty, or assessment or comply with any other remedy imposed under 40 CFR 96.54(d)(3) and the Act.
- g) Effect on other authorities: No provision of this Subpart, the NO_x Trading Program, a budget permit application, a budget permit, or a retired budget unit exemption under 40 CFR 96.5 shall be construed as exempting or excluding the owner or operator and, to the extent applicable, the account representative of a source or budget unit from compliance with any other regulations promulgated under the CAA, the Act, an approved State implementation plan, or a federally enforceable permit.

(Source: Amended at 35 Ill. Reg. _____, effective _____)