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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
PROPOSED AMENDMENTS TO 35 Ill. ADM. CODE 217,) R01-16
SUBPART V, ELECTRIC POWER GENERATION) (Rulemaking-Air)

TESTIMONY OF DENNIS LAWLER

My name is Dennis Lawler. I am Manager of the Division of Air Pollution Control for the Bureau of Air at the Illinois Environmental Protection Agency. In that role I am responsible for day-to-day operation of the division and focus considerable efforts on the development of Illinois' State Implementation Plan (SIP) to meet the requirements of the Clean Air Act (CAA). I have a Bachelor of Science degree in physics from Loras College and Master of Science degree in meteorology from the University of Wisconsin. I am a Certified Consulting Meteorologist by the American Meteorological Society. The intent of my testimony is to explain the purpose of this rulemaking and discuss the development of the proposal.

PURPOSE OF RULEMAKING

The Illinois Environmental Protection Agency (Agency) is proposing amendments to Part 217 of the Board's air pollution control regulations to control the emissions of nitrogen oxides (NOx) from fossil fuel fired electrical generating units (EGUs) during the period May 1 through September 30 of each year, beginning in 2003. The proposed amendments are intended to address obligations of the State of Illinois under the Clean Air Act (CAA) to submit control strategies necessary to demonstrate attainment of the 1-hour ozone National Ambient Air Quality Standard

(NAAQS) for the Metro-East/St. Louis moderate ozone nonattainment area (NAA) and to address concerns relating to a potential “bump up” of the Metro-East/St. Louis area to a serious NAA. The Agency had originally intended to address these issues in its proposed Subpart W, The NO_x Trading Program for Electrical Generating Units. That proposal, filed with the Board on July 11, 2000, and docketed as R01-9, was also submitted to demonstrate attainment of the 1-hour ozone NAAQS for the Lake Michigan severe ozone NAA and to satisfy a portion of Illinois’ obligation to submit a State Implementation Plan (SIP) to address the requirements of the so-called NO_x SIP Call.

On August 30, 2000, however, the United States Court of Appeals for the D.C. Circuit issued an order that changed the implementation date of the NO_x SIP Call from May 1, 2003, to May 31, 2004. The Agency subsequently filed a Motion to Amend its proposal in R01-9 which, among other things, changed Subpart W’s implementation date from May 1, 2003, to May 31, 2004, to conform with the Court Order. Because the State of Illinois is required to submit control strategies necessary to demonstrate attainment of the 1-hour NAAQS for the Metro-East/St. Louis NAA by May 1, 2003, this obligation can no longer be satisfied by Subpart W because of its later implementation date. The Agency, therefore, proposes these amendments to Subpart V, Electrical Power Generation, 35 Ill. Adm. Code 217.

Subpart V is a rate-based rule for subject units that limits NO_x emissions during the period May 1 through September 30 of each year beginning in 2003 to 0.25 lbs/mmBtu as part of the State’s ozone attainment demonstration for the Metro-East/St. Louis NAA. This rate-based limit for the State is consistent with the attainment demonstration for the Metro-East/St. Louis NAA submitted to USEPA on October 15, 1999. There has been some indication from USEPA that it may extend the

attainment deadline to May 2004 to be consistent with the SIP Call extension date. The Agency intends to proceed with this proposal even if USEPA proceeds with this attainment extension because it is the best way for the State to assure that it will meet its SIP obligations and not trigger sanctions. In addition, this approach provides the best prospect for avoiding a bump up of the Metro-East/St. Louis NAA to serious. This is because the extension has not yet been proposed and the previous attainment date extensions in St. Louis and other areas have already been challenged in Court. As a result, a SIP deficiency could occur leaving the State vulnerable to sanctions.

Under the Agency's proposal, Subpart V would apply to EGUs beginning May 1, 2003, and would remain in effect after the NOx SIP Call's implementation date. The continued effectiveness of the proposal will provide a level of certainty with respect to the following NOx SIP Call in light of the petition for *certiorari* that has been filed with the U.S. Supreme Court (Michigan v. EPA, i.e., the NOx SIP Call Case), litigation where the Metro-East/St. Louis area could face potential reclassification from moderate to serious (Sierra Club v. Browner), and finally certain challenges to USEPA's Extension Policy, as discussed below.

DEVELOPMENT OF PROPOSAL

A. The Ozone NAAQS

The United States Environmental Protection Agency (USEPA) has promulgated a 1-hour national ambient air quality standard (NAAQS) for ozone, which is set at 0.12 parts per million (ppm) and is designed to minimize the negative impacts of ground level ozone on public health.

In 1990, Congress amended the CAA to address continued nonattainment of the 1-hour ozone NAAQS by establishing a classification scheme based on relative air quality for areas not attaining the NAAQS. Under CAA Section 181, nonattainment areas were designated either marginal, moderate, serious, severe or extreme. Pursuant to the 1990 amendments, USEPA designated the Metro-East/St. Louis NAA as a moderate ozone NAA based on the area's air quality and pursuant to the criteria in CAA Section 181(a)(1). The 1990 amendments established specific planning requirements for each classification, including the need for Rate-of-Progress (ROP) reductions in ozone precursor emissions and an attainment demonstration. The ROP and attainment demonstration SIPs for moderate areas relying on photochemical grid modeling and for serious and above areas were required by 1994. CAA Section 181(a)(1) established November 15, 1996, as the attainment date for the Metro-East/St. Louis NAA. As discussed further above, USEPA has extended the attainment date for the Metro-East/St. Louis NAA.

B. Attainment Demonstration Under the CAA

The State of Illinois has the primary responsibility under the CAA for ensuring that Illinois meets the ozone NAAQS and is required to submit a SIP that specifies emission limitations, control requirements, and other measures necessary for attainment, maintenance and enforcement of the NAAQS within the State. SIPs must meet the substantive requirements contained in CAA Section 110(a)(2), must be adopted pursuant to notice and comment rulemaking, and must be submitted to USEPA for approval. This proposal when adopted will comprise part of the State's attainment demonstration for the 1-hour ozone NAAQS for the Metro-East/St. Louis NAA.

C. The Metro-East/St. Louis NAA Attainment Demonstration

The Metro-East/St. Louis NAA has not yet demonstrated attainment for the 1-hour ozone standard. The States of Illinois and Missouri have worked cooperatively to provide to USEPA an approvable attainment demonstration for the 1-hour ozone NAAQS for the Metro-East/St. Louis NAA. Illinois submitted its initial attainment demonstration for the Metro-East/St. Louis NAA in 1994, which identified the need for upwind reductions in ozone in order to attain the 1-hour NAAQS. Even though Illinois satisfied all CAA mandated requirements for the Metro-East portion of the NAA, exceedances of the NAAQS in the Metro-East/St. Louis NAA continue to occur.

On March 25, 1999, USEPA issued a policy (Extension Policy) providing that a nonattainment area impacted by upwind contributions of ozone, a moderate NAA, like the Metro-East/St. Louis NAA, could be granted an extension of its attainment date if the area met several requirements. As part of this policy, USEPA would defer the final findings on the attainment status for these NAAs and instead allow those areas to submit attainment SIPs that include boundary reductions in ozone achieved by control measures in the upwind area. These plans would then be reviewed and processed by USEPA on an expedited basis. The date for the final finding on attainment would be the date by which the relevant upwind areas will have reduced emissions and thereby will have reduced the level of ozone transport into the downwind areas.

On March 18, 1999, USEPA published a proposed rule entitled "Clean Air Reclassification and Notice of Potential Eligibility for Attainment Date Extension, Missouri and Illinois, St. Louis Nonattainment Area; Ozone." In the proposed rule, USEPA found that the Metro-East/St. Louis NAA had not met the attainment date applicable to moderate NAAs, and stated that if there was a final finding of nonattainment, the area would be reclassified by operation of law to a serious ozone

NAA. (Proposed Reclassification). USEPA also proposed to defer final action on the proposed finding of nonattainment until it could ascertain whether the date for final action should be deferred based on the application of its Extension Policy to the Metro-East/St. Louis NAA.

In October 1999, Illinois committed in a draft supplement to its attainment SIP for the Metro-East NAA to implementing state-wide reductions of NO_x from electrical generating units within the State (in both attainment and nonattainment areas). After completing the public hearing on the draft supplement, Illinois submitted this supplemental attainment SIP to USEPA in February 2000. The final attainment strategy for the area in the October 1999 supplement assumes that, beginning in 2003, the 23 jurisdictions affected by the NO_x SIP Call, including the eastern one-third of Missouri, and the District of Columbia, would limit NO_x emissions from large EGUs to an emissions rate of no more than 0.25 pounds of NO_x per heat input of million British thermal units, expressed as 0.25 lbs/mmbtu. Large EGUs in the western two-thirds of Missouri would be limited to a NO_x emission rate of no more than 0.35 lbs/mmbtu. The Agency's photochemical grid modeling supports attainment for the Metro-East/St. Louis NAA based on these regional NO_x reductions and the control measures implemented in Illinois. The NO_x reductions called for in proposed Subpart V now being submitted to the Board require an emission limit of 0.25 lbs/mmbtu for large EGUs.

On April 17, 2000, USEPA proposed to approve the 1-hour attainment demonstration SIPs for the Metro-East/St. Louis NAA contingent on the States of Illinois and Missouri preparing revised modeling to incorporate corrections to their 1996 base year emissions inventories and upon each State submitting rules to implement the control levels relied upon in the modeling. The revisions to the modeling and drafts of proposed rules were submitted to USEPA on June 29, 2000, and adopted rules from both States are due to USEPA by December 31, 2000.

On November 11, 1998, the Sierra Club and the Missouri Coalition for the Environment (hereinafter jointed referred to as Sierra Club), filed a complaint in the U.S. District Court for the District of Columbia regarding failure of the Metro-East/St. Louis NAA to achieve attainment by the statutory deadlines of the CAA (Sierra Club v. Browner). One of the counts would require USEPA to reclassify or “bump up” the Metro-East/St. Louis NAA from a moderate to a serious ozone nonattainment area pursuant to the requirements of the CAA Section 181(b)(2). 42 U.S.C. § 7511(b)(2). This count, if sustained, would impose additional control requirements mandated by the CAA for serious areas on sources within the Metro-East/St. Louis NAA, even though Illinois’ attainment demonstration shows that the particular additional controls required of a serious area are not necessary for the Metro-East/St. Louis NAA to attain the NAAQS.

Both USEPA and the State of Illinois have stated their intention to ensure that the Metro-East/St. Louis NAA satisfies the requirements of the Extension Policy and the requirements to avoid reclassification noted by USEPA in its proposed rulemaking. Thus, Illinois was required to, and did, submit revised modeling and proposed rules to USEPA by June 30, 2000, and is required to have adopted rules by December 31, 2000. This proposal will, when adopted, address Illinois’ obligations under the Extension Policy and comply with representations made to the Court supporting its and USEPA’s request that the Court use its equitable discretion to avoid reclassifying the area to a serious NAA. To date, the Court has made no ruling on the various summary judgment motions submitted in this case.

D. Agency Outreach Process

In late 1998, following the issuance of the NOx SIP Call, the Agency met with representatives of industry and environmental groups to notify them of the Agency's intent to proceed with development of rules responsive to the SIP Call. When the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) issued its stay of the submittal date for SIPs under the NOx SIP Call on May 25, 1999, the Agency then shifted its attention to the attainment demonstrations due by November 15, 1999, for the Metro-East/St. Louis NAA, and by December 31, 2000, for the Lake Michigan NAA. With the status of the NOx SIP Call in question, the Agency believed it was incumbent to determine what control strategies (or levels of reduction) were necessary to attain the 1-hour ozone NAAQS in these nonattainment areas.

As discussed previously, modeling analyses demonstrated that NOx reductions that could be obtained from application of a rate of no more than 0.25 lbs NOx/mmbtu to large EGUs beginning in May 2003 would address the 1-hour ozone NAAQS in the Metro-East/St. Louis NAA.

When the D.C. Circuit upheld the NOx SIP Call in its March 3, 2000 opinion, the Agency again turned to developing a program both to comply with the NOx SIP Call and to satisfy its attainment approach. The Agency again began meeting with existing and new EGUs. Additionally, a representative from the American Lung Association of Chicago (ALAC), on behalf of ALAC, the Illinois Environmental Council and the Environmental Law and Policy Center, attended most meetings and kept other representatives of the environmental community apprised of the meetings. Also, representatives from the Illinois Environmental Regulatory Group (IERG) attended meetings. The Agency met with these groups on May 2, May 16, May 30, June 15, June 27 and July 6, 2000.

On June 22, 2000, the D.C. Circuit removed the stay of the submittal of SIPs responsive to the NOx SIP Call. Based upon representations made by USEPA (reiterated in USEPA's Region V

letter to the Agency on July 7, 2000, preliminary addressing this proposal) that the May 1, 2003 implementation date for the NOx SIP Call remained intact, the Agency decided to proceed only with the NOx Trading Program, believing that it was sufficient to address the requirements of the attainment demonstration for the Metro-East/St. Louis NAA in 2003. The Agency met with the above-mentioned groups on June 27 and July 6, 2000, and filed Subpart W with the Board on July 11, 2000 (docketed as R01-9).

When the D.C. Circuit moved the implementation date to May 31, 2004, in its August 30, 2000 order, the Agency returned again to Subpart V, the rate-based rule, now required for the attainment demonstration for the Metro-East/St. Louis NAA. The Agency met with affected sources on September 15, 2000, and requested and received written comments on the proposal following that meeting.

Historically, the Agency, regulated sources, and environmental groups have been able to agree on many of the proposals submitted to the Board as fast-track rulemakings under Section 28.5 of the Act. The Agency believes there is agreement on Subpart V, with the exception of a couple of points that will be discussed in other testimony.

In testimony that will be provided by the Agency, the Board and public will hear a review of the various control technology alternatives and a discussion of the rule proposal itself. We believe that this proposal is necessary to meet federal and state obligations relating to the Metro-East/St. Louis area and to address the concerns relating to bump up of the area.