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MAY 30 2006

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED NEW CAIR SO₂, CAIR NO_x)
ANNUAL AND CAIR NO_x OZONE SEASON) R06- **26**
TRADING PROGRAMS, 35 ILL. ADM.) (Rulemaking- Air)
CODE 225, CONTROL OF EMISSIONS)
FROM LARGE COMBUSTION SOURCES,)
SUBPARTS A, C, D and E)

NOTICE


TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

Matthew Dunn, Chief
Division of Environmental Enforcement
Office of the Attorney General
188 West Randolph St., 20th Floor
Chicago, IL 60601

Virginia Yang
Deputy Legal Counsel
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the REGULATORY PROPOSAL entitled "PROPOSED NEW CAIR SO₂, CAIR NO_x ANNUAL AND CAIR NO_x OZONE SEASON TRADING PROGRAMS, 35 ILL. ADM. CODE 225, CONTROL OF EMISSIONS FROM LARGE COMBUSTION SOURCES, SUBPARTS A, C, D AND E," MOTION TO EXPEDITE RULEMAKING, MOTION TO HOLD REQUIRED HEARINGS IN SPRINGFIELD AND COLLINSVILLE, MOTION FOR WAIVER OF REQUIREMENTS and APPEARANCES of the Illinois Environmental Protection Agency a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: *May 22, 2006*
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544
217.782.9143 (TDD)

**THIS FILING IS SUBMITTED
ON RECYCLED PAPER**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 - B. Air Pollution Control- Transport of Emissions of Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂); Final Rule, 71 *Fed. Reg.* 25328 (April 28, 2006).
 - C. Nitrogen Oxides (NO_x) Reduction under Phase II of the Acid Rain Program, U.S. Environmental Protection Agency, Clean Air Markets.
See, www.epa.gov/airmarkets/arp/nox/phase2.html.

- D. *Fossil Fuel-Fired Power Plants: Report to the House and Senate Environment and Energy Committees*, IEPA/BOA/04-020, Illinois Environmental Protection Agency, September 2004.
 - E. *Guidance on Establishing an Energy Efficiency and Renewable Energy (EE/RE) Set-Aside in the NO_x Budget Trading Program*, U.S. Environmental Protection Agency, Office of Atmospheric Programs, March 1999.
 - F. *Guidance on State Implementation Plan (SIP) Credits for Emission Reductions From Electric-Sector Energy Efficiency and Renewable Energy Efficiency and Renewable Energy Measures*, U.S. Environmental Protection Agency, Office of Air and Radiation, August 2004.
 - G. *Illinois Sustainable Energy Plan*, Office of Governor Rod R. Blagojevich, Submitted to the Illinois Commerce Commission, February 11, 2005.
 - H. Stakeholder Meetings, Sign-in Sheets dated January 24, 2006, January 31, 2006, February 7, 2006, February 14, 2006, February 21, 2006, and February 28, 2006.
9. Synopsis of Testimony
 10. First Notice Form for New 35 Ill. Adm. Code 225, Subparts A, C, D and E
 11. Proposed New 35 Ill. Adm. Code 225, Subparts A, C, D and E
 12. *Technical Support Document for Control of Sulfur Dioxide and Nitrogen Oxide Emissions from Electric Generating Units*, AQPSTR 06-01, Illinois Environmental Protection Agency, March 2006.
 13. Documents Relied Upon (See, Attachment A)
Note: An asterisk (*) indicates documents that the Illinois EPA has not provided for the Board in this proposal packet.
 14. Incorporations by Reference (Note: The Agency has not provided copies of the items denoted with an asterisk (*) listed below for the Board in this proposal packet. The Agency has requested a waiver of the requirement to submit these items to the Board as these items are voluminous and readily available to the Board.)
 - A. * CAIR SO₂ Trading Program, 40 CFR 96, subpart AAA (CAIR SO₂ Trading Program General Provisions, excluding 40 CFR §§ 96.204, and 96.206); 40 CFR 96, subpart BBB (CAIR Designated Representative for CAIR SO₂ Sources); 40 CFR 96, subpart FFF (CAIR SO₂ Allowance Tracking System); 40 CFR 96, subpart GGG (CAIR SO₂ Allowance Transfers); and 40 CFR 96, subpart HHH (Monitoring and Reporting).

- B. * CAIR NO_x Annual Trading Program, 40 CFR 96, subpart AA (NO_x Annual Trading Program General Provisions, excluding 40 CFR §§ 96.104, 96.105(b)(2), and 96.106); 40 CFR 96, subpart BB (CAIR Designated Representative for CAIR NO_x Sources); 40 CFR 96, subpart FF (CAIR NO_x Allowance Tracking System); 40 CFR 96, subpart GG (CAIR NO_x Allowance Transfers); and 40 CFR 96, subpart HH (Monitoring and Reporting).
 - C. * CAIR NO_x Ozone Season Trading Program 40 CFR 96, subpart AAAA (CAIR NO_x Ozone Season Trading Program General Provisions) (excluding 40 CFR §§ 96.304, 96.305(b)(2), and 96.306); 40 CFR 96, subpart BBBB (CAIR Designated Representative for CAIR NO_x Ozone Season Sources); 40 CFR 96, subpart FFFF (CAIR NO_x Ozone Season Allowance Tracking System); 40 CFR 96, subpart GGGG (CAIR NO_x Ozone Season Allowance Transfers); and 40 CFR 96, subpart HHHH (Monitoring and Reporting).
 - D. * 40 CFR 75 (2005).
 - E. * 40 CFR 78 (2005).
 - F. Federal Energy Management Program, *M&V Measurement and Verification for Federal Energy Projects*, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Version 2.2, DOE/GO-102000-0960 (September 2000).
- 15. Certificate of Service
 - 16. Disk in Microsoft WORD containing First Notice Form for New Part 225 (FIRSTNOTICE-225.doc) and Proposed New Part 225 (RULE-225.doc).

ATTACHMENT A
Documents Relied Upon

A. Documents Relied Upon - Statement of Reasons

1. * The Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
2. * The Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.(2005).
3. * National Ambient Air Quality Standards for Particulate Matter; Proposed Rule, 70 *Fed. Reg.* 2620 (January 17, 2006).
4. * Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard; Final Rule, 70 *Fed. Reg.* 71612 (November 29, 2005).
5. * Proposed Rule to Implement the Fine Particulate National Ambient Air Quality Standards; Proposed Rule, 70 *Fed. Reg.* 65984 (November 1, 2005).
6. * Rulemaking on Section 126 Petition from North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program; Proposed Rule, 70 *Fed. Reg.* 49708 (August 24, 2005).
7. * Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked and Technical Correction to Phase 1 Rule; Final Rule, 70 *Fed. Reg.* 44470 (August 3, 2005).
8. * Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule, 70 *Fed. Reg.* 39104 (July 6, 2005).
9. * Finding of Failure to Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM2.5; Final Rule, 70 *Fed. Reg.* 21147 (April 25, 2005).
10. * Air Quality Designations and Classifications for the Fine Particles (PM2.5) National Ambient Air Quality Standards; Final Rule, 70 *Fed. Reg.* 944 (January 5, 2005).
11. * Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule, 69 *Fed. Reg.* 32684 (June 10, 2004).

12. * Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates; Final Rule, 69 *Fed. Reg.* 23858 (April 30, 2004).
13. * Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase I; Final Rule, 69 *Fed. Reg.* 23951 (April 30, 2004).
14. * Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules; Final Rule, 69 *Fed. Reg.* 21604 (April 21, 2004).
15. * Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule, 69 *Fed. Reg.* 4566 (January 30, 2004).
16. * Regional Haze Regulations; Final Rule, 64 *Fed. Reg.* 35714 (July 1, 1999).
17. * Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone: Final Rule, 63 *Fed. Reg.* 57356 (October 27, 1998)
18. * National Ambient Air Quality Standards for Particulate Matter; Final Rule, 62 *Fed. Reg.* 38652 (July 18, 1997).
19. * National Ambient Air Quality Standards for Ozone; Final Rule, 62 *Fed. Reg.* 38856 (July 18, 1997).
20. * *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000).
21. * *U.S. Bank National Association v. Clark*, 217 Ill.2d 334, 837 N.E.2d 74 (2005).
22. * *Spina v. Toyota Motor Credit Corporation*, 301 Ill.App.3d 364, 703 N.E.2d 484 (1st Dist. 1998).
23. * *In re Marriage of Lasky*, 176 Ill.2d 75, 678 N.E.2d 1035 (1997).
24. * *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 264 (1981).
25. * *Virginia v. Browner*, 80 F.3d 869 (4th Cir. 1996).
26. * *New York v. United States*, 505 U.S. 144 (1992).

B. Documents Relied Upon-Technical Support Document

1. * National Ambient Air Quality Standards for Ozone; Final Rule, 62 *Fed. Reg.* 38856 (July 18, 1997).
2. * National Ambient Air Quality Standards for Particulate Matter; Final Rule, 62 *Fed. Reg.* 38652 (July 18, 1997).
3. * Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule, 70 *Fed. Reg.* 25162 (May 12, 2005). (Exhibit A to the Statement of Reasons).
4. * The Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
5. * Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule, 69 *Fed. Reg.* 4566 (January 30, 2004).
6. * Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule, 69 *Fed. Reg.* 32684 (June 10, 2004).
7. * Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule, 70 *Fed. Reg.* 39104 (July 6, 2005).
8. *Control Techniques for Sulfur Oxide Emissions from Stationary Sources*, EPA-450/3-81-004, U.S. Environmental Protection Agency-Office of Air and Radiation, April 1981.
9. *Alternative Control Techniques Document--NOx Emissions from Utility Boilers*, EPA-453/R-94-023, U. S. Environmental Protection Agency-Office of Air Quality Planning and Standards, Research Triangle Park, N. C. 27711, March 1994.
10. *Alternative Control Techniques Document--NOx Emissions from Stationary Gas Turbines*, EPA-453/R-93-007, U. S. Environmental Protection Agency-Office of Air Quality Planning and Standards, Research Triangle Park, N. C. 27711, January 1993.
11. *Controlling Nitrogen Oxides Under the Clean Air Act: A Menu of Options*, State and Territorial Air Pollution Program Administrators/ Association of Air Pollution Control Officials, July 1994.

12. *The Mega Symposium SO₂ Control Technologies and Continuous Emission Monitors*, Electric Power Research Institute, EPRI-DOE-EPA Combined Utility Air Pollutant Control Symposium, TR-108683-V2, August 1997.
13. Regulatory Impact Analysis for the Final Clean Air Interstate Rule, EPA-452/R-05-002, U. S. Environmental Protection Agency-Office of Air and Radiation, March 2005.
14. *Annual Energy Outlook 2004 with Projections to 2025*, DOE/EIA-0383, U.S. Department of Energy, Energy Information Administration, January 2004.
15. Technical Support Document for the Clean Air Interstate Rule Notice of Final Rulemaking; Regional and State SO₂ and NO_x Emissions Budgets, U.S. Environmental Protection Agency- Office of Air and Radiation, March 2005.
16. Output Based Regulations: A Handbook of Air Regulators, U.S. Environmental Protection Agency, Office of Atmospheric Programs, August 2004.
17. *Illinois Sustainable Energy Plan*, Office of Governor Rod R. Blagojevich, Submitted to the Illinois Commerce Commission, February 11, 2005.
18. Federal Energy Management Program, *M&V Measurement and Verification for Federal Energy Projects*, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Version 2.2, DOE/GO-102000-0960, September 2000.
19. Incorporating Renewables Under CAIR, Presentation to American Wind Energy Association Seminar, Massachusetts Department of Environmental Protection, January 12, 2006.
20. U.S. Department of Energy, Energy Efficiency and Renewable Energy, Illinois Wind Maps. <http://www.awea.org/projects/illinois.html>
21. Wind Project Data Base, American Wind Energy Association. <http://www.awea.org/projects/illinois.html>
22. U.S. Hydropower Resources Assessment for Illinois, Prepared for the U.S. Department of Energy Assistant Secretary for Energy Efficiency and Renewable Energy by Idaho National Engineering Laboratory Renewable Energy Products Department, Lockheed Martin Idaho Technologies Company, January 1997.
23. Landfill Methane Outreach Program, Landfill Project Database, U.S. Environmental Protection Agency. <http://www.epa.gov/lmop/proj/xls/candlslmopdata.xls>
24. State Electricity Profiles 2002, Department of Energy-Energy Information

Administration.

25. *Guidance on State Implementation Plan (SIP) Credits for Emission Reductions From Electric-Sector Energy Efficiency and Renewable Energy Efficiency and Renewable Energy Measures*, U.S. Environmental Protection Agency, Office of Air and Radiation, August 2004.
26. *Job Jolt: The Economic Impacts of Repowering the Midwest, the Clean Energy Development Plan for the Heartland*, An Economic Study by the Regional Economics Applications Laboratory for the Environmental Law and Policy Center, February 2001.
27. Wind Energy for Rural Economic Development, WINDPOWER 2005, National Renewable Energy.
28. Landfill Methane Outreach Program (LMOP), U.S. Environmental Protection Agency. <http://www.epa.gov/lmop/proj/index.htm> and <http://www.epa.gov/lmop/benefits.html>
29. "Coal Mining Poised to Make Comeback in Illinois," State Journal Register, March 20, 2006.
30. Email from Conrad Anderson, Madison Power Corporation to Roston Cooper, Illinois EPA, Permit Section, dated March 20, 2006.
31. Growing Green Power in Illinois, Conscious Choice, August 2001. <http://www.consciouschoice.com/2001/cc1408/growinggreenpower1408.html>
32. Developing and Updating Output Based NO_x Budget Trading Program Under the NO_x SIP Call, U.S. Environmental Protection Agency, May 8, 2000.
33. Analysis of Illinois NO_x Budget Reductions, ICF Resources, LLC, March 25, 2006.
34. Average Daily Solar Radiation Per Month, National Renewable Energy Laboratory Resource Assessment Program.
35. The Chicago Solar Partnership, table generated from the data contained at <http://www.chicagosolarpartnership.com>
36. Illinois Coal Properties in Regard to Mercury, Abadi, Rostom, ICCI Mercury Meeting, Chicago, IL, November 9, 2005.
37. Technical Support Document for Final Clean Air Interstate Rule- Air Quality Modeling, U.S. Environmental Protection Agency- Office of Air and Radiation, March 2005.

38. Attainment Strategy Options-DRAFT, LADCO, October 28, 2005.
39. *Annual Energy Outlook 2006 with Projections to 2030*, DOE/EIA-0383 (2006), U.S. Department of Energy, Energy Information Administration, February 2006.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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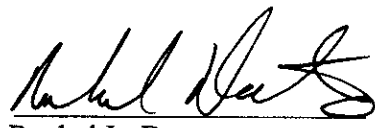
STATE OF ILLINOIS
Pollution Control Board

APPEARANCE

The undersigned, as one of its attorneys, hereby enters an Appearance on behalf of the
Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: May 22, 2006
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
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The undersigned, as one of its attorneys, hereby enters an Appearance on behalf of the
Illinois Environmental Protection Agency.

Respectfully Submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:



John J. Kim

Managing Attorney, Air Regulatory Unit
Division of Legal Counsel

DATED: May 22, 2006
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**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY PROPOSAL OF
REGULATIONS**

The Illinois Environmental Protection Agency moves that the Illinois Pollution Control Board adopt the attached regulations.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:


Douglas P. Scott
Director

DATED: May 22, 2006
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-3397

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MOTION FOR EXPEDITED REVIEW

NOW COMES Proponent, Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Rachel L. Doctors, and pursuant to 35 Ill. Adm. Code 101.512, respectfully submits this Motion for Expedited Review ("Motion") in the Matter of Proposed New CAIR SO₂, CAIR NO_x Annual and CAIR NO_x Ozone Season Trading Programs, 35 ILL. ADM. CODE 225, Control of Emissions from Large Combustion Sources, Subparts A, C, D and E. In support of its Motion, the Illinois EPA states as follows:

1. On July 18, 1997, the United States Environmental Protection Agency ("USEPA") added a new 24-hour and a new annual National Ambient Air Quality Standard ("NAAQS") for fine particles, termed PM_{2.5}. The attainment demonstration is due April 5, 2008, and the attainment date for most areas is April 5, 2010. The proposed rules are a necessary part of this attainment demonstration.

2. On July 18, 1997, USEPA also promulgated revised primary and secondary ozone NAAQS that increased the averaging period for the ozone standard from 1-hour to 8-hour and lowered the concentration for violations from 0.12 to 0.08 parts per million (ppm). Most 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. The Clean Air Interstate Rule (“CAIR”) as proposed is a necessary part of that attainment demonstration.

3. The Greater Chicago and Metro-East/St. Louis are in nonattainment of both the 8-hour ozone NAAQS and PM_{2.5} NAAQS.

4. On May 12, 2005, USEPA promulgated the CAIR rule because it recognized that notwithstanding the Clean Air Act requirements for achieving the NAAQS, the majority of eastern states, including Illinois, will not be able to meet the 8-hour ozone and PM_{2.5} NAAQS by the statutory deadlines for attainment without a reduction in the interstate transport of pollution from upwind areas. To address transport issues, USEPA promulgated the CAIR to require 28 eastern states, including Illinois and the District of Columbia, to revise their State Implementation Plans (“SIPs”) to include control measures to reduce emissions of SO₂ and NO_x. These SIPs are due on September 11, 2006.

5. The CAIR SO₂, CAIR NO_x Annual and CAIR NO_x Ozone Season Trading Programs are cap and trade programs for affected utility units and as included in Illinois EPA’s proposal are designed to meet the CAIR requirement by reducing the amount of SO₂ and NO_x emitted from such units and to further other environmental goals of the State of Illinois.

6. However, on April 28, 2006, USEPA promulgated the CAIR federal implementation plan (“FIP”) for all affected states that is effective June 27, 2006. See, 71 *Fed. Reg.* 25327 *et seq.* USEPA plans to replace the provisions of the CAIR FIP after it approves a state’s CAIR SIP. In the mean time, the provisions of the FIP stand in place of a state’s provisions. The first action of consequence that USEPA will take under the FIP will be making NO_x allocations on July 30, 2007, for the 2009 control period. Such allocations will be recorded on September 30, 2007. Similarly, USEPA will make NO_x allocations for 2010 on July 30,

2008, that will be recorded on September 30, 2008. On July 30, 2009, it will make allocations for control periods 2011 through 2013. If state-determined NO_x allocations are approved earlier than these recordation deadlines, USEPA will use the state-determined allocations. *Id.* at 25352. It is important to note that USEPA's allocation methodology is substantially different from the one that is proposed by Illinois EPA.

7. As discussed in the Illinois EPA's *Statement of Reasons*, the most important element of Illinois EPA's proposal is its allocation methodology that provides incentives for energy efficiency, installation of air pollution controls, and development of renewable energy resources. USEPA's allocation methodology does not necessarily promote these State goals.

8. Accordingly, if this proposed rulemaking is not promulgated by April 2007, Illinois will lose the ability to control the allocation for 2009 and to promote greater energy efficiency and renewable energy goals, which will in turn create administrative confusion for both the affected units and Illinois EPA.

9. For the reasons stated above, and due to the impending date of April 2007 for Illinois to submit NO_x allocations and attainment demonstrations, the proposed regulations need to be adopted in an expedited manner. Further, if Illinois does not submit attainment demonstrations by the applicable deadlines, USEPA could start a FIP sanctions clock.

10. In light of the foregoing, it is necessary to expedite review in this matter.

11. Therefore, Illinois EPA requests that the Illinois Pollution Control Board ("Board") proceed to First Notice under the Illinois Administrative Procedure Act, 5 ILCS 100/1-1 *et seq.*, without reaching a decision on this merits, by accepting the regulatory language proposed by the Illinois EPA in this rulemaking proposal for purposes of First Notice.

12. Illinois EPA also requests that the requisite public hearings be scheduled as soon

as possible in accordance with Section 28(a) of the Environmental Protection Act, 415 ILCS 5/28(a).

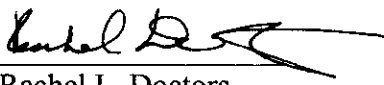
13. Illinois EPA posits that the information necessary for the Board to proceed to First Notice in this rulemaking and to schedule a public hearing is contained in the Statement of Reasons. If more information is needed, Illinois EPA will fully cooperate to expeditiously provide the same to the Board and its Hearing Officer.

14. As required by 35 Ill. Adm. Code 101.512, this Motion is accompanied by an Affirmation attesting that the facts cited herein are true.

WHEREFORE, for the reasons set forth above, Illinois EPA respectfully requests that the Board grant its Motion and expedite review in this matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

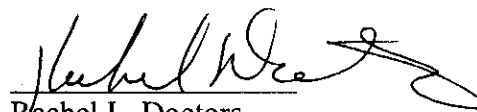
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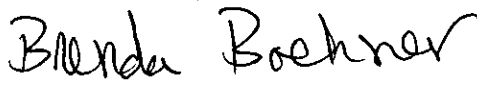
AFFIRMATION

I, Rachel L. Doctors, under other, hereby state and affirm that I am an Assistant Counsel for Illinois EPA and the facts cited in the foregoing Motion for Expedited Review are true and correct to the best of my information and belief.


Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

SUBSCRIBED AND SWORN TO BEFORE ME

This 19th day of May, 2006


Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MOTION TO HOLD REQUIRED HEARINGS
IN SPRINGFIELD AND COLLINSVILLE

NOW COMES the Proponent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, Rachel L. Doctors, and pursuant to 35 Ill. Adm. Code 101.500 and 102.402, moves that the Illinois Pollution Control Board (Board) hold the first required hearing under this rulemaking proposal in Springfield, Illinois and the second required hearing in Collinsville, Illinois. In support of its Motion, Illinois EPA respectfully states as follows:

1. Section 102.412(a) of the Board's procedural rules states, in pertinent part, "in case of state-wide regulations, hearings shall be held in at least two areas of the State." 35 Ill. Adm. Code 102.412 (a).

2. The proposed regulations are expected to affect existing and new electric generating units all across the state, with affected sources in Chicago, central Illinois and southern Illinois. There are approximately 229 existing electric generating units that will be subject to the CAIR NO_x Annual trading, CAIR SO₂ trading, and the CAIR NO_x Ozone Season trading programs. As the City of Springfield is not only an affected area of the State, but is centrally located for all the affected areas of the State, the City of Springfield is an appropriate first hearing location pursuant to Section 102.412 (a) of the Board's procedural rules.

3. Section 102.428 (c) of the Board's procedural rules describes the format of hearings, stating in pertinent part, "Proponents must present testimony in support of the proposal first." 35 Ill. Adm. Code 102.428 (c). This being the case the Illinois EPA must present testimony supporting the proposal at the first hearing. In order to conserve scarce State resources, the Illinois EPA moves that the first hearing be held in Springfield.

4. In addition to the facts cited above, State administrative and financial constraints favor a Springfield forum for the first hearing. While the Board and the Illinois EPA both maintain offices in Springfield, a large number of Illinois EPA's technical staff located in Springfield will be testifying and providing technical assistance in this rulemaking proposal. At this juncture, Illinois EPA estimates that the attendance of approximately 10 to 12 employees will be required at these hearings. Given the number of Illinois EPA's technical staff, in addition to the legal and administrative support staff, that will be attending the hearings, expenses to the State of Illinois due to transportation, food, and lodging for a non-Springfield forum will be considerable. The potential expenses to the State will be even more onerous in any protracted hearing. Thus, holding at least one of the required hearings in Springfield will allow for the Board and Illinois EPA to conserve administrative resources.

5. Further, many of the Illinois EPA staff that will be involved in the hearings for this rulemaking proposal will also be involved in the Illinois EPA's recently filed rulemaking proposal concerning mercury emissions. See, In the Matter of: Proposed New 35 Ill. Adm. Code 225, Control of Emissions from Large Combustion Sources, R06-25. The potential for even some of those personnel to be forced to choose between participating in one hearing at the expense of missing another would impose a severe hardship upon the Illinois EPA in presenting and defending the merits of its proposals. If at least one hearing in this rulemaking proposal

were held in Springfield, then those Illinois EPA personnel involved in both rulemakings would at least be in a better position to participate to the fullest extent possible.

6. With respect to the second hearing, Illinois EPA requests that it be held in Collinsville, Illinois. As the City of Collinsville is located with respect to affected units in the Southern portion of the State, it is an appropriate location for a second hearing location pursuant to Section 102.412 (a) of the Board's procedural rules.

7. In addition to the facts cited above, State administrative and financial constraints favor a Collinsville forum for the second hearing. As stated above, the Board and the Illinois EPA both maintain offices in Springfield and a Collinsville location represents a reasonable commute from the Board's and the Illinois EPA's Springfield offices. At this juncture, Illinois EPA estimates that the attendance of approximately 10 to 12 employees will be required at these hearings. Given the number of Illinois EPA's technical staff, in addition to the legal and administrative support staff, that will be attending the hearings, expenses to the State of Illinois due to transportation, food, and lodging for a non-Springfield forum will be considerable. Holding the second hearing in Collinsville will allow for the Board and Illinois EPA to conserve administrative resources.

8. Illinois EPA held public outreach meetings in Springfield for six consecutive Tuesdays beginning in January 2006. Numerous industry and environmental organization representatives participated in these meetings and expressed significant interest in this rulemaking proposal.

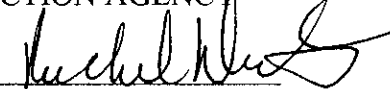
9. Illinois EPA recognizes and appreciates the Board's concern that members of the affected sources and the public have every opportunity to participate in Board hearings. Illinois EPA agrees that all practicable efforts to allow for such input should be made. The Cities of

Springfield and Collinsville would provide diversely located forums for input from the public throughout the State.

WHEREFORE, for the reasons set forth above, the Illinois EPA respectfully requests that the Board hold the first hearing under this rulemaking proposal in Springfield and the second in Collinsville.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: May 22, 2006

1021 N. Grand Ave., East
P.O. Box 19276
Springfield, Illinois 62794-9276
217.782.5544
217.782.9143 (TDD)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

PROPOSED NEW CAIR SO₂, CAIR NO_x)

ANNUAL AND CAIR NO_x OZONE SEASON)

TRADING PROGRAMS, 35 ILL. ADM.)

CODE 225, CONTROL OF EMISSIONS)

FROM LARGE COMBUSTION SOURCES,)

SUBPARTS A, C, D and E)

R06-26
(Rulemaking- Air)

RECEIVED
CLERK'S OFFICE

MAY 30 2006

STATE OF ILLINOIS
Pollution Control Board

MOTION FOR WAIVER OF REQUIREMENTS

NOW COMES Proponent, the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Illinois EPA), by its attorney, Rachel L. Doctors, and pursuant to 35 Ill. Adm. Code and 101.500, 102.110, 102.402, moves that the Illinois Pollution Control Board (Board) waive certain requirements, namely that Illinois EPA submit an entire copy of the regulatory proposal to the Attorney General, that Illinois EPA submit an entire copy of the regulatory proposal to the Department of Natural Resources (DNR), and that Illinois EPA submit to the Board the original and nine copies of the regulatory proposal including the incorporations by reference and all documents relied upon. In support of its Motion, Illinois EPA states as follows:

1. Section 102.200 of the Board's procedural rules requires that the original and nine copies of each regulatory proposal be filed with the Clerk. This entire regulatory proposal will likely consist of over 2,000 pages. Given the length of the proposal and the resources required to provide nine copies, Illinois EPA requests that it be allowed to file the original and four complete copies of the proposal plus five partial copies, the partial copies consisting of Table of Contents, Statement of Reasons, pleadings, and the proposed rules absent documents relied upon and incorporations by reference.

2. Section 102.200 of the Board's procedural rules also requires that a regulatory

proposal be served on the Attorney General. On March 28, 2006, Mr. Matthew Dunn, Chief of the Environmental Control Division of the Attorney General's Office (AGO) in Chicago, informed Illinois EPA that Illinois EPA need not supply the AGO with a copy of the entire proposal, and that a partial copy of the submittal would suffice.

3. Section 102.200 requires that a regulatory proposal be served on the DNR. On March 20, 2006, Ms. Virginia Wang, Deputy Counsel of the DNR in Springfield, informed Illinois EPA that Illinois EPA need not supply DNR with a copy of the entire proposal, and that a partial copy of the submittal would suffice.

4. Section 5-75(a) of the Illinois Administrative Procedure Act (IAPA) provides in relevant part that an agency may incorporate by reference the regulations, standards and guidelines of an agency of the United States or a nationally recognized organization or association without publishing the incorporated material in full. 5 ILCS 100/5-75(a). Further, Section 5-75(b) of the IAPA provides in relevant part that the agency adopting a rule or regulation under the IAPA shall maintain a copy of the referenced rule, regulation, standard or guideline in at least one of its principal offices and shall make it available to the public upon request. 5 ILCS 100/5-75(b). In developing this proposed rulemaking, Illinois EPA has incorporated by reference certain documents. The documents incorporated by reference are readily accessible to, or are already within the possession of, the Board. Given this ease of accessibility, and the lengthy nature of the documents, Illinois EPA requests that the Board waive the normal copy requirements of Section 102.200 of the Board's procedural rules and allow Illinois EPA to not file any copies of the items listed below, except for document (f). Since, document (f) may not be readily accessible but is rather lengthy, Illinois EPA requests that it be allowed to file an original and 4 copies of the said document. The documents incorporated

by reference are as follows:

- a) CAIR SO₂ Trading Program, 40 CFR 96, subpart AAA (CAIR SO₂ Trading Program General Provisions, excluding 40 CFR §§ 96.204, and 96.206); 40 CFR 96, subpart BBB (CAIR Designated Representative for CAIR SO₂ Sources); 40 CFR 96, subpart FFF (CAIR SO₂ Allowance Tracking System); 40 CFR 96, subpart GGG (CAIR SO₂ Allowance Transfers); and 40 CFR 96, subpart HHH (Monitoring and Reporting).
- b) CAIR NO_x Annual Trading Program, 40 CFR 96, subpart AA (NO_x Annual Trading Program General Provisions, excluding 40 CFR §§ 96.104, 96.105(b)(2), and 96.106); 40 CFR 96, subpart BB (CAIR Designated Representative for CAIR NO_x Sources); 40 CFR 96, subpart FF (CAIR NO_x Allowance Tracking System); 40 CFR 96, subpart GG (CAIR NO_x Allowance Transfers); and 40 CFR 96, subpart HH (Monitoring and Reporting).
- c) CAIR NO_x Ozone Season Trading Program 40 CFR 96, subpart AAAA (CAIR NO_x Ozone Season Trading Program General Provisions) (excluding 40 CFR §§ 96.304, 96.305(b)(2), and 96.306); 40 CFR 96, subpart BBBB (CAIR Designated Representative for CAIR NO_x Ozone Season Sources); 40 CFR 96, subpart FFFF (CAIR NO_x Ozone Season Allowance Tracking System); 40 CFR 96, subpart GGGG (CAIR NO_x Ozone Season Allowance Transfers); and 40 CFR 96, subpart HHHH (Monitoring and Reporting).
- d) 40 CFR 75 (2005).
- e) 40 CFR 78 (2005).
- f) Federal Energy Management Program, *M&V Measurement and Verification for Federal Energy Projects*, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Version 2.2, DOE/GO-102000-0960 (September 2000).

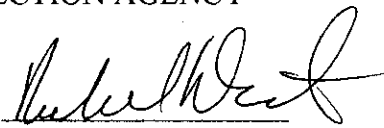
5. Section 27 (a) of the Environmental Protection Act (Act) requires Illinois EPA to provide information supporting the proposal. 415 ILCS 5/27 (a). In doing so, the Illinois EPA has provided documents in which were directly relied upon while drafting the regulatory proposal. The list of the documents that are the subject of this motion is found in Attachment A. Some of the items are denoted with an asterisk. The items with an asterisk in Attachment A are readily accessible to, or are already within the possession of, the Board. Given the ease of

accessibility, and in most cases the lengthy nature of the documents, Illinois EPA requests that the Board waive the normal copy requirements of Section 102.200 of the Board's procedural rules and allow Illinois EPA to not file any copies of the items denoted with an asterisk listed on Attachment A.

6. The remainder of the documents listed in Attachment A are quite large in number and length. For that reason, Illinois EPA requests that the Board waive the normal copy requirements and allow Illinois EPA to file an original and four copies of the remainder of the documents listed in Attachment A.

WHEREFORE, for the reasons set forth above, Illinois EPA requests that the Board waive the requirement that it file the entire proposal with the AGO and DNR, and waive the copy requirement and allow Illinois EPA to provide the Board with an original and four complete copies of the proposal, along with five partial copies as described *supra*. Further, the Illinois EPA requests that the Board allow Illinois EPA to file no copies of the documents incorporated by reference, except for document (f) in which Illinois EPA requests the Board to allow an original and four copies to be submitted. Finally, Illinois EPA requests that the Board allow Illinois EPA to file either no copies or an original and four copies of the documents relied upon as listed in Attachment A.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Rachel L. Doctors
Assistant Counsel
Division of Legal Counsel

DATED: May 22, 2006

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ATTACHMENT A
Documents Relied Upon

A. Documents Relied Upon - Statement of Reasons

1. * The Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
2. * The Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.(2005).
3. * National Ambient Air Quality Standards for Particulate Matter; Proposed Rule, 70 *Fed. Reg.* 2620 (January 17, 2006).
4. * Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard; Final Rule, 70 *Fed. Reg.* 71612 (November 29, 2005).
5. * Proposed Rule to Implement the Fine Particulate National Ambient Air Quality Standards; Proposed Rule, 70 *Fed. Reg.* 65984 (November 1, 2005).
6. * Rulemaking on Section 126 Petition from North Carolina To Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program; Proposed Rule, 70 *Fed. Reg.* 49708 (August 24, 2005).
7. * Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked and Technical Correction to Phase 1 Rule; Final Rule, 70 *Fed. Reg.* 44470 (August 3, 2005).
8. * Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule, 70 *Fed. Reg.* 39104 (July 6, 2005).
9. * Finding of Failure to Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM2.5; Final Rule, 70 *Fed. Reg.* 21147 (April 25, 2005).
10. * Air Quality Designations and Classifications for the Fine Particles (PM2.5) National Ambient Air Quality Standards; Final Rule, 70 *Fed. Reg.* 944 (January 5, 2005).
11. * Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule, 69 *Fed. Reg.* 32684 (June 10, 2004).

12. * Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates; Final Rule, 69 *Fed. Reg.* 23858 (April 30, 2004).
13. * Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase I; Final Rule, 69 *Fed. Reg.* 23951 (April 30, 2004).
14. * Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules; Final Rule, 69 *Fed. Reg.* 21604 (April 21, 2004).
15. * Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule, 69 *Fed. Reg.* 4566 (January 30, 2004).
16. * Regional Haze Regulations; Final Rule, 64 *Fed. Reg.* 35714 (July 1, 1999).
17. * Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone: Final Rule, 63 *Fed. Reg.* 57356 (October 27, 1998)
18. * National Ambient Air Quality Standards for Particulate Matter; Final Rule, 62 *Fed. Reg.* 38652 (July 18, 1997).
19. * National Ambient Air Quality Standards for Ozone; Final Rule, 62 *Fed. Reg.* 38856 (July 18, 1997).
20. * *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000).
21. * *U.S. Bank National Association v. Clark*, 217 Ill.2d 334, 837 N.E.2d 74 (2005).
22. * *Spina v. Toyota Motor Credit Corporation*, 301 Ill.App.3d 364, 703 N.E.2d 484 (1st Dist. 1998).
23. * *In re Marriage of Lasky*, 176 Ill.2d 75, 678 N.E.2d 1035 (1997).
24. * *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 264 (1981).
25. * *Virginia v. Browner*, 80 F.3d 869 (4th Cir. 1996).
26. * *New York v. United States*, 505 U.S. 144 (1992).

B. Documents Relied Upon-Technical Support Document

1. * National Ambient Air Quality Standards for Ozone; Final Rule, 62 *Fed. Reg.* 38856 (July 18, 1997).
2. * National Ambient Air Quality Standards for Particulate Matter; Final Rule, 62 *Fed. Reg.* 38652 (July 18, 1997).
3. * Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule, 70 *Fed. Reg.* 25162 (May 12, 2005). (Exhibit A to the Statement of Reasons).
4. * The Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
5. * Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule); Proposed Rule, 69 *Fed. Reg.* 4566 (January 30, 2004).
6. * Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Proposed Rule, 69 *Fed. Reg.* 32684 (June 10, 2004).
7. * Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations; Final Rule, 70 *Fed. Reg.* 39104 (July 6, 2005).
8. *Control Techniques for Sulfur Oxide Emissions from Stationary Sources*, EPA-450/3-81-004, U.S. Environmental Protection Agency-Office of Air and Radiation, April 1981.
9. *Alternative Control Techniques Document--NOx Emissions from Utility Boilers*, EPA-453/R-94-023, U. S. Environmental Protection Agency-Office of Air Quality Planning and Standards, Research Triangle Park, N. C. 27711, March 1994.
10. *Alternative Control Techniques Document--NOx Emissions from Stationary Gas Turbines*, EPA-453/R-93-007, U. S. Environmental Protection Agency-Office of Air Quality Planning and Standards, Research Triangle Park, N. C. 27711, January 1993.
11. *Controlling Nitrogen Oxides Under the Clean Air Act: A Menu of Options*, State and Territorial Air Pollution Program Administrators/ Association of Air Pollution Control Officials, July 1994.

12. *The Mega Symposium SO₂ Control Technologies and Continuous Emission Monitors*, Electric Power Research Institute, EPRI-DOE-EPA Combined Utility Air Pollutant Control Symposium, TR-108683-V2, August 1997.
13. Regulatory Impact Analysis for the Final Clean Air Interstate Rule, EPA-452/R-05-002, U. S. Environmental Protection Agency-Office of Air and Radiation, March 2005.
14. *Annual Energy Outlook 2004 with Projections to 2025*, DOE/EIA-0383, U.S. Department of Energy, Energy Information Administration, January 2004.
15. Technical Support Document for the Clean Air Interstate Rule Notice of Final Rulemaking; Regional and State SO₂ and NO_x Emissions Budgets, U.S. Environmental Protection Agency- Office of Air and Radiation, March 2005.
16. Output Based Regulations: A Handbook of Air Regulators, U.S. Environmental Protection Agency, Office of Atmospheric Programs, August 2004.
17. *Illinois Sustainable Energy Plan*, Office of Governor Rod R. Blagojevich, Submitted to the Illinois Commerce Commission, February 11, 2005.
18. Federal Energy Management Program, *M&V Measurement and Verification for Federal Energy Projects*, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Version 2.2, DOE/GO-102000-0960, September 2000.
19. Incorporating Renewables Under CAIR, Presentation to American Wind Energy Association Seminar, Massachusetts Department of Environmental Protection, January 12, 2006.
20. U.S. Department of Energy, Energy Efficiency and Renewable Energy, Illinois Wind Maps. <http://www.awea.org/projects/illinois.html>
21. Wind Project Data Base, American Wind Energy Association. <http://www.awea.org/projects/illinois.html>
22. U.S. Hydropower Resources Assessment for Illinois, Prepared for the U.S. Department of Energy Assistant Secretary for Energy Efficiency and Renewable Energy by Idaho National Engineering Laboratory Renewable Energy Products Department, Lockheed Martin Idaho Technologies Company, January 1997.
23. Landfill Methane Outreach Program, Landfill Project Database, U.S. Environmental Protection Agency. <http://www.epa.gov/lmop/proj/xls/candlflsmopdata.xls>
24. State Electricity Profiles 2002, Department of Energy-Energy Information

Administration.

25. *Guidance on State Implementation Plan (SIP) Credits for Emission Reductions From Electric-Sector Energy Efficiency and Renewable Energy Efficiency and Renewable Energy Measures*, U.S. Environmental Protection Agency, Office of Air and Radiation, August 2004.
26. *Job Jolt: The Economic Impacts of Repowering the Midwest, the Clean Energy Development Plan for the Heartland*, An Economic Study by the Regional Economics Applications Laboratory for the Environmental Law and Policy Center, February 2001.
27. Wind Energy for Rural Economic Development, WINDPOWER 2005, National Renewable Energy.
28. Landfill Methane Outreach Program (LMOP), U.S. Environmental Protection Agency. <http://www.epa.gov/lmop/proj/index.htm> and <http://www.epa.gov/lmop/benefits.html>
29. "Coal Mining Poised to Make Comeback in Illinois," State Journal Register, March 20, 2006.
30. Email from Conrad Anderson, Madison Power Corporation to Roston Cooper, Illinois EPA, Permit Section, dated March 20, 2006.
31. Growing Green Power in Illinois, Conscious Choice, August 2001. <http://www.consciouschoice.com/2001/cc1408/growinggreenpower1408.html>
32. Developing and Updating Output Based NO_x Budget Trading Program Under the NO_x SIP Call, U.S. Environmental Protection Agency, May 8, 2000.
33. Analysis of Illinois NO_x Budget Reductions, ICF Resources, LLC, March 25, 2006.
34. Average Daily Solar Radiation Per Month, National Renewable Energy Laboratory Resource Assessment Program.
35. The Chicago Solar Partnership, table generated from the data contained at <http://www.chicagosolarpartnership.com>
36. Illinois Coal Properties in Regard to Mercury, Abadi, Rostom, ICCI Mercury Meeting, Chicago, IL, November 9, 2005.
37. Technical Support Document for Final Clean Air Interstate Rule- Air Quality Modeling, U.S. Environmental Protection Agency- Office of Air and Radiation, March 2005.

38. Attainment Strategy Options-DRAFT, LADCO, October 28, 2005.
39. *Annual Energy Outlook 2006 with Projections to 2030*, DOE/EIA-0383 (2006), U.S. Department of Energy, Energy Information Administration, February 2006.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-5544

March 28, 2006

Mr. Matthew Dunn
Office of Attorney General
188 W. Randolph St., 20th Floor
Chicago, IL 60601

Dear Mr. Dunn:

This letter is to confirm our telephone conversation on March 28, 2006, in which we discussed the Clean Air Interstate Rulemaking pertaining to Nitrogen Oxide and Sulfur Dioxide Trading Programs for Electric Generating Units that the Illinois EPA will be filing with the Pollution Control Board.

In our conversation, you agreed that the Illinois EPA need not serve the Office of Attorney General as required by the Act. The Agency will send you copies of the proposed new regulation and the Statement of Reasons of the submittal at the time it is filed with the Board. The Agency currently anticipates filing the regulatory proposal April 4, 2006. Further, the Agency will provide the Office of Attorney General with whatever other information or documents you feel you need after you have reviewed the proposed amendments and Statement of Reasons.

We sincerely appreciate your cooperation in this matter. If you have any questions, please do not hesitate to call.

Sincerely,

Shannon Bilbruck
Legal Investigator
Division of Legal Counsel



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-5544

March 20, 2006

Ms. Virginia Yang
Illinois Department of Natural Resources
One Resource Way
Springfield, Illinois 62702

Dear Ms. Yang:

This letter is to confirm our telephone conversation on March 20, 2006, in which we discussed the Clean Air Interstate Rulemaking pertaining to Nitrogen Oxide and Sulfur Dioxide Trading Programs for Electric Generating Units that the Illinois EPA will be filing with the Pollution Control Board.

In our conversation, you agreed that the Illinois EPA need not serve the Department of Natural Resources as required by the Act. The Agency will send you copies of the proposed new regulation and the Statement of Reasons of the submittal at the time it is filed with the Board. The Agency currently anticipates filing the regulatory proposal April 4, 2006. Further, the Agency will provide the Department of Natural Resources with whatever other information or documents you feel you need after you have reviewed the proposed amendments and Statement of Reasons.

We sincerely appreciate your cooperation in this matter. If you have any questions, please do not hesitate to call.

Sincerely,

Shannon Bilbruck
Legal Investigator
Division of Legal Counsel

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

PROPOSED NEW CAIR SO₂, CAIR NO_x)
ANNUAL, CAIR NO_x OZONE SEASON)
TRADING PROGRAMS, 35 ILL. ADM.)
CODE 225, CONTROL OF EMISSIONS)
FROM LARGE COMBUSTION,)
SOURCES, SUBPARTS A, C, D and E)

R06- 26
(Rulemaking- Air)

RECEIVED
CLERK'S OFFICE
MAY 30 2006
STATE OF ILLINOIS
Pollution Control Board

STATEMENT OF REASONS

I. INTRODUCTION

The Illinois Environmental Protection Agency (Illinois EPA or Agency) submits this Statement of Reasons to the Illinois Pollution Control Board (Board) pursuant to Sections 10, 27, and 28 of the Environmental Protection Act (415 ILCS 5/10, 27, and 28) (Act) and 35 Ill. Adm. Code 102.202(b) in support of the proposed new Part 225, Subparts A, C, D and E to the Board's air pollution control regulations (35 Ill. Adm. Code 225) (Part 225). The purpose of this proposal is to reduce intra- and interstate transport of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from fossil fuel-fired electric generating units (affected units), on an annual basis (January 1 through December 31) and on an ozone season basis (May 1 through September 30) of each calendar year, through the adoption of the Clean Air Interstate Rule (CAIR) SO₂ trading program, the CAIR NO_x Annual trading program and the CAIR NO_x Ozone Season trading program that establish specific allocations for NO_x and retirement ratios for SO₂ allowances established under the CAIR.

This proposal is intended to satisfy Illinois' obligations under USEPA's Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to Acid Rain Program; Revisions to the NO_x SIP Call, (CAIR), 70 *Fed. Reg.* 25162 (May 12, 2005). See, Exhibit A.

The proposed new part also is intended to address, in part, Illinois EPA's obligation to meet certain requirements under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.* (CAA). These requirements include Part D, Subpart 1 of the CAA, adoption of control strategies necessary to demonstrate attainment of the fine particulate matter (PM_{2.5}) and 8-hour ozone National Ambient Air Quality Standards (NAAQS) in the greater Chicago moderate nonattainment area and the Metro East/St. Louis moderate nonattainment area; Part D, Subpart 2 of the CAA, adoption of control strategies necessary to demonstrate attainment of 8-hour ozone NAAQS for the greater Chicago nonattainment area and Metro East/St. Louis nonattainment area; Section 169A, the adoption an implementation plan addressing visibility; and Section 110(a)(2)(D) of the CAA, adoption of a State Implementation Plan (SIP) addressing interstate transport of air pollution.

II. BACKGROUND

A. 8-Hour Ozone NAAQS

On July 18, 1997, USEPA promulgated revised primary and secondary ozone NAAQS that increased the averaging period for the ozone standard from 1-hour to 8-hour and lowered the concentration for violations from 0.12 to 0.08 parts per million (ppm).¹ The revised 8-hour ozone standards are more protective of public health and the environment and more stringent than the pre-existing 1-hour ozone standards. *See*, Exhibit A at 25169. USEPA published the 8-hour ozone attainment and nonattainment designations on April 30, 2004. *See*, 69 *Fed. Reg.* 23858 (April 30, 2004). All areas that were violating the 1-hour ozone NAAQS at the time of the 8-hour designations were also designated as nonattainment areas for the 8-hour ozone NAAQS. Specifically, Illinois has two areas (greater Chicago and Metro East/St. Louis)

¹ The newly revised standard is the 3-year average of the fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.08 ppm. *See*, 62 *Fed. Reg.* 38856 (July 18, 1997).

consisting of 12 counties or partial counties that were designated as not attaining the 8-hour ozone standard.² The designations were effective on June 15, 2004. *Id.* at 23898. USEPA's final rule implementing the 8-hour ozone standard also revoked the 1-hour standard on June 15, 2005. *See*, 69 *Fed. Reg.* 23951 (April 30, 2004).

Section 181 of the CAA sets forth a system that classifies ozone nonattainment areas as "marginal," "moderate," "serious," or "extreme" areas.³ *See*, 42 U.S.C. § 7511a. For each classification (e.g., a moderate ozone nonattainment area), the CAA specifies the attainment deadline for ozone NAAQS and the control programs that the states must adopt to help attain the NAAQS by reducing precursor emissions in the formation of ozone, that is NO_x, and volatile organic material (VOM). *See*, 42 U.S.C. §§ 7511 and 7511a. The specified control measures must be included in the state's SIP.

Illinois currently has two areas designated as moderate nonattainment areas for the 8-hour ozone standard. The moderate 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, June 15, 2009; which is within six years of the effective date of the nonattainment designations. The attainment demonstrations will revise the State's SIP for ozone.

² The two areas (greater Chicago and Metro East/St. Louis) were designated as moderate nonattainment. The greater Chicago nonattainment area, for purposes of the 8-hour ozone standard, consists of the following counties and partial counties: Cook County, DuPage County, Grundy County (partial- Aux Sable and Goose Lake townships), Kane County, Kendall County (partial- Oswego Township), Lake County, McHenry County and Will County. The Metro East/St. Louis nonattainment area for purposes of the 8-hour ozone standard, consists of the following counties: Jersey County, Madison County, Monroe County, St. Clair County, and Randolph Township in Randolph County. *See*, 40 CFR § 81.314.

³ The classifications are based on the "design value" for a nonattainment area. The design value is a measure of the severity of the ozone concentrations in an area based on the monitored values from all ozone monitors in the area. For each monitor in an area, the fourth highest value over a three-year period is determined. The values for all monitors in the area are then compared and the highest of these values becomes the design value for the area.

B. PM_{2.5} NAAQS

On July 18, 1997, USEPA also added a new 24-hour and a new annual NAAQS for fine particles, using as the indicator particles with aerodynamic diameters smaller than a nominal 2.5 micrometers,⁴ termed PM_{2.5}. *See*, 62 *Fed. Reg.* 38652. USEPA established health- and welfare-based (primary and secondary) annual and 24-hour standards for PM_{2.5}.⁵ USEPA published the PM_{2.5} attainment and nonattainment designations on January 5, 2005. *See*, 70 *Fed. Reg.* 944 (January 5, 2005). USEPA designated two areas (greater Chicago and Metro East/St. Louis) consisting of 12 counties or partial counties within Illinois as not attaining the PM_{2.5} standard.⁶ *Id.* at 968. The designations became effective on April 5, 2005. The attainment demonstration is due April 5, 2008, and the attainment date for most areas is April 5, 2010, based on air quality data from 2007 through 2009. States may be granted up to a five-year extension of the attainment date with a demonstration showing that it is impractical to attain within 5 years. *See*, 70 *Fed. Reg.* 65984, 66003 (November 1, 2005).

C. Clean Air Act Requirements

The CAA establishes a comprehensive program for controlling and improving the nation's air quality through both state and federal regulation. Under Sections 108 and 109 of the CAA, USEPA is charged with identifying air pollutants that endanger the public health and

⁴ On January 17, 2006, USEPA proposed to amend the NAAQS for PM_{2.5}. *See*, 71 *Fed. Reg.* 2620.

⁵ The annual standards are 15 micrograms per cubic meter, based on the 3-year average of annual mean PM_{2.5} concentrations. The 24-hour standard is a level of 65 micrograms per cubic meter, based on the 3-year average of the annual 98th percentile of 24-hour concentrations. The annual standard is the more restrictive standard.

⁶ USEPA listed the areas of greater Chicago and Metro East /St. Louis as areas that did not attain the PM_{2.5} standard. The Chicago nonattainment area, for purposes of the PM_{2.5} standard, consists of the following counties/partial counties: Cook County, DuPage County, Grundy County (partial- Aux Sable and Goose Lake Townships), Kane County, Kendall County (partial- Oswego Township), Lake County, McHenry County and Will County. The St. Louis/Metro East nonattainment area, for purposes of the PM_{2.5} standard, consists of the following counties/partial counties: Madison County, Monroe County, Randolph County (partial- Baldwin Township) and St. Clair County. *See*, 40 CFR § 81.314.

welfare, and with formulating the NAAQS that specify the maximum permissible concentrations of those pollutants in the ambient air. See, 42 U.S.C. §§ 7408-7409. USEPA has promulgated NAAQS for various pollutants, including 8-hour ozone and PM_{2.5}. See, 40 CFR 50. Pursuant to Section 107(a) of the CAA, states are given primary responsibility for ensuring that the ambient air quality meets the NAAQS for the identified pollutants. See, 42 U.S.C. § 7407(a).

Pursuant to Section 110(a) of the CAA, a state must submit a SIP for each pollutant that specifies emission limitations applicable to sources of pollution and other measures necessary for the attainment, maintenance and enforcement of the NAAQS, as well as address visibility and interstate transport. See, 42 U.S.C. § 7410(a). Regardless of an area's classification, within three years after a NAAQS is promulgated all areas are required to submit a SIP meeting the requirements of this Section. The requirements in Subpart D, Subpart 1 (Sections 171 through 179B of the CAA) contain more particular SIP requirements for nonattainment areas, including: 1) reasonably available control measures (RACM), and reasonable available control technology (RACT) measures; 2) measures to assure reasonable further progress (RFP) towards attainment; 3) emissions inventory of sources in the nonattainment area; 4) enforceable emissions limits for stationary sources; 5) new source review (NSR) requirements; and 6) contingency measures. These requirements apply to Illinois' 8-hour ozone nonattainment areas and its PM_{2.5} nonattainment areas. In addition, Subpart 2 of Part D of the CAA, specifically Sections 182 and 183, provide specific provisions applicable to areas designated as nonattainment for ozone and planning requirements that must be included in the relevant SIPs for Illinois. See, 42 U.S.C. §§ 7511a, and 7511b.

Procedurally SIPs submitted to meet the substantive requirements contained in Section 110(a) of the CAA must be adopted pursuant to public notice and opportunity for public

comment, and must be submitted to USEPA for approval. This proposal, if adopted by the Board, will comprise part of the State's attainment demonstrations for both the 8-hour ozone and PM_{2.5} NAAQS for both the Metro-East/St. Louis nonattainment area and the greater Chicago nonattainment area. Failure to submit a complete SIP or to submit a SIP that demonstrates attainment can result in a "SIP call" pursuant to Section 110(k)(5) of the CAA, which includes sanctions pursuant to Section 179 of the CAA.

D. Visibility and Regional Haze

The visibility protection program under Sections 169A, 169B and 110(a)(2)(J) of the CAA is designed to protect federally designated Class I areas or "areas of great scenic importance" from impairment due to manmade air pollution. *See*, 42 U.S.C. §§ 7491, 7492, and 7410(a)(2)(J). The current federal program addresses visibility impairment that is attributable to a specific source or group of sources. USEPA, quoting the House Report, stated: "In 1977, Congress also had a concern with visibility problems caused by pollutants that 'emanate from a variety of sources' and 'regionally distributed sources.'" *See*, 64 *Fed. Reg.* 35714, 35715 (July 1, 1999).⁷ Congress recognized that emissions of particulate matter, SO₂ and NO_x from major stationary sources reduce visibility.

In 1999, and as amended in 2005, USEPA promulgated regulations to establish a comprehensive visibility protection program addressing visibility problems from regionally distributed sources. *See*, 64 *Fed. Reg.* 35714 (July 1, 1999) and 70 *Fed. Reg.* 39105 (July 6, 2005). States are required to submit an implementation plan addressing the requirements of 40 CFR § 51.308, including the requirement to address emissions from so-called best available retrofit technology (BART)-eligible sources. A BART-eligible source is a major stationary

⁷ USEPA quoting H.R. No. 294, 95th Cong. 1st Session at 205 (1977) in 64 *Fed. Reg.* 35715 at ft. No. 8.

source, including a reconstructed source, from one of 26 identified major source categories which have the potential to emit 250 tons per year or more of any air pollutant, and which were placed into operation between August 1962 and August 1977. *See*, 64 *Fed. Reg.* 35714, 35737 (July 1, 1999). Such sources may be required to install BART. Electric generating sources are one of the identified source categories: “fossil fuel-fired steam electric plants of more than 250 mmBtu/hr of heat input.” *See*, 42 U.S.C. § 7491.

For this source category, states may choose to require these electric generating units to install BART or to adopt and to require units located in their state to participate in the CAIR. *See*, 70 *Fed. Reg.* 39104, 39106 (July 6, 2005). In Illinois there are 21 electric generating units located in 12 power plants that are potentially impacted by BART. Illinois EPA has been in the process of identifying its BART-eligible sources for several years, and adoption of the CAIR will meet a part of Illinois’ plan for addressing regional haze, as well as generally helping to meet Illinois’ visibility goals.

E. Clean Air Interstate Rule

USEPA recognizes that notwithstanding the CAA requirements for achieving the NAAQS as described above, the majority of eastern states will not be able to meet the 8-hour ozone and PM_{2.5} NAAQS by the statutory deadlines for attainment. *See*, 69 *Fed. Reg.* 4566, 4579 (January 30, 2004). USEPA recognized that the major reason for this failure is that states are not able to address interstate transport of pollution from upwind areas. Interstate transport is the process by which air pollutants move from upwind areas to downwind areas.

To address transport issues, USEPA promulgated the CAIR to require 28 eastern states and the District of Columbia, identified as significantly contributing or interfering with the

maintenance of one or more NAAQS in one or more identified downwind areas to revise their SIPs to include control measures to reduce emissions of SO₂ and NO_x. These SIPs are due on September 11, 2006. Reducing upwind precursor emissions will assist the downwind PM_{2.5} and 8-hour ozone nonattainment areas in achieving the NAAQS. Moreover, attainment will be achieved in a more equitable, cost-effective manner than if each nonattainment area attempted to achieve attainment by implementing local controls alone. *See*, Exhibit B at 25,333.⁸ Based on air quality modeling and cost analyses, USEPA concluded that SO₂ and NO_x emissions in certain states in the eastern part of the country, through the phenomenon of air pollution transport,⁹ contribute significantly to downwind nonattainment, or interfere with maintenance, of the PM_{2.5} and/or 8-hour ozone NAAQS.

USEPA also determined that 25 states along with the District of Columbia must reduce annual SO₂ and NO_x emissions for the purposes of the PM_{2.5} NAAQS.¹⁰ USEPA also determined that 25 states along with the District of Columbia must reduce NO_x emissions for the purposes of the 8-hour ozone NAAQS.¹¹ USEPA estimates that the required SO₂ and NO_x reductions will bring 52 of the 79 counties that are currently designated as PM_{2.5} nonattainment into attainment by 2010, and 57 of 74 counties into attainment by 2015. *Id.* at 25333. For ozone, the benefits are

⁸ “Rulemaking on Section 126 Petition from North Carolina to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to the Clean Air Interstate Rule; Revisions to the Acid Rain Program,” (hereinafter “FIP”), signed March 15, 2006. (71 *Fed. Reg.* 25327, April 28, 2006). Exhibit B.

⁹ The term “transport” includes the transport of both fine particles (PM_{2.5}) and their precursor emissions and/or transport of both ozone and its precursor emissions. *Id.* at 25333.

¹⁰ For PM_{2.5}, the States are: Alabama, Florida, Georgia (PM_{2.5} only), **Illinois**, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota (PM_{2.5} only), Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. On March 15, 2006, USEPA made the final determination to include the States of Delaware and New Jersey. *Id.* at 25340.

¹¹ For 8-hour ozone, the States are: Alabama, Arkansas (Ozone only), Connecticut (Ozone only), Delaware, Florida, **Illinois**, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts (Ozone only), Michigan, Mississippi (Ozone only), Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. *See*, Exhibit A at 25227.

less, with only three out of 40 nonattainment counties coming into attainment by 2010 and six out of 22 nonattainment counties by 2015. *See, Technical Support Document for Control of Sulfur Dioxide and Nitrogen Oxide Emissions from Electric Generating Units*, Illinois EPA, AQPSTR 06-01, March 2006 (hereinafter TSD), Document Relied Upon B-37 at 50.

The emissions reductions requirements are based on controls that USEPA has determined to be highly cost effective. The source category that USEPA determined to be most cost-effective to control is electric generating units, although states have the flexibility to choose the measures to adopt to achieve the specified emissions reductions. As discussed above, additional reductions to address transported pollution are necessary for eastern states to attain the new NAAQS for 8-hour ozone and PM_{2.5}. Under the CAIR, USEPA is requiring that states found to be contributing to PM_{2.5} transport be subject to an annual NO_x limitation and SO₂ limitation under the CAIR and that states found to be contributing to ozone transport be subject to an ozone season limitation. *See*, Exhibit A at 25289. In the CAIR, USEPA found that Illinois was a significant contributor for both PM_{2.5} and ozone, therefore Illinois is subject to annual (the CAIR SO₂ and the CAIR NO_x) and seasonal (the CAIR NO_x ozone season) limitations. Illinois is also significantly impacted by contributions of pollution from other states. USEPA has established three emissions budgets for Illinois: the first would cap emissions of NO_x on an annual basis; the second would cap emissions of NO_x during the ozone season; and the third would cap the emissions of SO₂ on an annual basis. These caps are based on emission reductions from electric generating units. The required emissions reduction will be implemented in two phases. Phase I for NO_x reductions will start in 2009 (covering 2009-2014) and SO₂ reductions will start in 2010 (covering 2010-2014). Phase II for both NO_x and SO₂ reductions will start in 2015 (covering 2015 and thereafter).

In lieu of complying with emissions budgets, states have the option of adopting the federal cap and trade programs covering its electric generating units: CAIR NO_x Annual trading program; CAIR NO_x Ozone Season trading program; and CAIR SO₂ trading program. *See*, 40 CFR §§ 51.123(o)(1) and (aa) and 40 CFR § 51.124(o)(1), respectively. With respect to the CAIR NO_x trading programs, each state is given a pool of allowances equal to their NO_x budgets to distribute as they choose. With respect to the CAIR SO₂ trading program, USEPA allocates the allowances to affected electric generating units based on the allocations that the unit receives under the federal Acid Rain program. The trading programs do not require electric generating units to install specific control technology or meet a particular emission limit, instead, each affected unit is required at the end of each control period to hold allowances sufficient to cover the tons of NO_x and SO₂ emitted. These allowances can be obtained either through a direct allocation from a state (NO_x allowances) or USEPA (SO₂ allowances) or through trading. It is anticipated that affected units that can install the least costly controls will do so, and will over control, and thereby have extra allowances to sell to other electric generating units that cannot as cost-effectively reduce emissions.

Regardless of which option a state chooses, complying with an emissions budget for electric generating units or adopting the CAIR trading programs, a SIP meeting the requirements of the CAIR is due no later than September 11, 2006.

1. CAIR FIP

However, on April 28, 2006, USEPA promulgated a federal implementation plan for all affected states that is effective June 27, 2006. *See*, Exhibit B. USEPA plans to replace the provisions of the CAIR FIP after it approves a state's CAIR SIP. In the mean time the

provisions of the FIP stand in place of a state's provisions. The first action that USEPA will take under the FIP will be making NO_x allocations on July 30, 2007, for the 2009 control period. Such allocations will be recorded on September 30, 2007. Similarly, USEPA will make NO_x allocations for 2010 on July 30, 2008, that will be recorded on September 30, 2008. On July 30, 2009, NO_x allocations will be made for control periods 2011 through 2013. If state determined NO_x allocations are approved earlier than these recordation deadlines, USEPA will use the state determined allocations. *See*, Exhibit B at 25352.

As will be discussed *supra*, the most important element of Illinois EPA's proposal is its allocation methodology that provides incentives for energy efficiency, installation of air pollution controls, and development of renewable energy resources. USEPA's allocation methodology does not necessarily promote these State goals.

2. Clean Air Act Support for the CAIR

USEPA promulgated the CAIR pursuant to the requirements of the CAA Section 110(a)(2)(D). *See*, 42 U.S.C. § 7410(a)(2)(D). Section 110(a)(2)(D) of the CAA applies by its terms to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. This Section is the central CAA provision concerning pollutant transport. It requires a SIP to contain adequate provisions that prohibit:

any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in or, interfere with maintenance by, any other State with respect to any . . . national primary or secondary ambient air quality standard . . .

42 U.S.C. § 7410(a)(2)(D). In the CAIR, USEPA has interpreted Section 110(a)(2)(D) of the CAA to require that certain states reduce emissions by specified amounts, and has determined those amounts based on the availability of highly cost effective controls for identified source

categories. USEPA interpreted this same provision, and developed a detailed methodology for applying it in the so-called NO_x SIP Call rulemaking, which concerned interstate transport of NO_x as an ozone precursor. USEPA developed the CAIR relying heavily on the NO_x SIP Call approach.¹²

In the NO_x SIP Call, USEPA interpreted Section 110(a)(2)(D) of the CAA to authorize the Administrator of USEPA to determine the amount of emissions in upwind states that “contribute significantly” to downwind nonattainment or “interfere with” downwind maintenance, and require those states to eliminate that amount of emissions. USEPA has adopted much the same interpretation and application of Section 110(a)(2)(D) of the CAA for regulating downwind transport of precursors of PM_{2.5} and 8-hour ozone as USEPA adopted for the NO_x SIP Call. USEPA determined that upwind states’ emissions “contribute significantly” to downwind nonattainment or interfere with maintenance of 8-hour ozone and PM_{2.5} NAAQS. *See*, Exhibit A at 25162.

3. Interaction between the CAIR and the NO_x SIP Call Program

A majority of the states affected by the CAIR were also subject to the NO_x SIP Call. The NO_x SIP Call capped emissions from large sources of NO_x during the ozone season (May 1 through September 30) in the affected states. It identified large cement kilns, large stationary reciprocating internal combustion engines (hereinafter “IC engines”), and large boilers (both industrial and commercial) as the highly cost-effective units to control. For large cement kilns

¹² The NO_x SIP Call (entitled “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule”) was promulgated by action dated October 27, 1998, and was USEPA’s principal effort to reduce interstate transport of precursors for both the 1-hour ozone NAAQS and the 8-hour ozone NAAQS. *See*, 63 *Fed. Reg.* 57356 (October 27, 1998). On appeal the portion concerning the 8-hour ozone was rejected, hence the need for the CAIR rule. *See*, *Michigan v. EPA*, 213 *F.3d* 663 (DC Cir. 2000).

and IC engines, states were required to adopt more traditional rate-based or control technology type rules. Under the CAIR, the control measures for kilns and engines¹³ must remain in place. Illinois implemented the requirements for cement kilns by adopting regulations in as set forth in 35 Ill. Adm. Code 217, Subpart T. See, In the Matter of: Proposed New 35 Ill. Adm. Code 217, Subpart T, Cement Kilns, and Amendments to 35 Ill. Adm. Code 211 and 217, R01-11 March 15, 2001. These regulations will remain effective.

For utility boilers, affected states were given the option to include them in the ozone season trading program rather than adopting a rate-based or technology standard regulation for control of NO_x emissions from these units. Illinois implemented the NO_x SIP Call trading program for electric generating units through the adoption and implementation of Subpart W of 35 Ill. Adm. Code Part 217. The rule was implemented in the 2004 ozone season.¹⁴ The CAIR Ozone Season NO_x trading program will replace the current NO_x SIP Call trading program for electric generating units. Illinois EPA will continue to operate the NO_x SIP Call trading program until implementation of the CAIR begins in 2009. USEPA and Illinois EPA will no longer operate the NO_x SIP Call trading program after the 2008 ozone season, as the CAIR NO_x Ozone Season trading program will replace the NO_x SIP Call trading program.

With respect to non-electric generating units (industrial boilers), Illinois also implemented the NO_x SIP Call trading program for these units as set forth in Subpart U of 35 Ill.

¹³ The portion of the NO_x SIP call that concerned control of IC engines was appealed and remanded to USEPA. USEPA reduced the required control level to a reduction of 82 percent (from 90 percent) and promulgated a final rule on April 21, 2004 (hereinafter "Phase II" rule). Affected States are required to submit SIPs for affected units requiring compliance no later than May 1, 2007. See, 69 Fed. Reg. 21604, 21621 (April 21, 2004). Illinois EPA expects to be submitting its proposal to the Board shortly.

¹⁴ In the Matter of: Proposed New 35 Ill. Adm. Code 217, Subpart W, The NO_x Trading Program for Electrical Generating Units, and Amendments to 35 Ill. Adm. Code 211 and 217, R01-9, December 26, 2000.

Adm. Code Part 217.¹⁵ Under the CAIR, states have the option of either including the industrial boilers in only the CAIR NO_x Ozone Season trading program or by adopting a more traditional type of measure to cap emissions of these units during the ozone season. The CAIR specifically excludes industrial boilers (non-electric generating units) from the CAIR NO_x Annual trading program, except as opt-in units. As Illinois EPA is required under Sections 172 and 182 of the CAA to propose RACT for this source category and to adopt regulations demonstrating attainment of the two new NAAQS, and as Illinois EPA is planning on proposing a statewide RACT-type rule for these units the Fall of 2006, Illinois EPA is not proposing to include these units in the CAIR NO_x Ozone Season trading program.

Although the NO_x SIP Call trading program will cease for non-electric generating units after the 2008 control period, allowances allocated under the NO_x SIP Call trading program for control periods before 2009 can be banked and used in the CAIR NO_x Ozone Season trading program, either by the CAIR affected sources for compliance or others with general accounts. See, Exhibit A at 25274.

4. Interaction between the CAIR and the Acid Rain Program

The Title IV Acid Rain Program was promulgated by Congress as part of the Clean Air Act Amendments of 1990 (CAAA). See, 42 U.S.C. § 7651 *et seq.* The federal Acid Rain program for SO₂ was the first cap and trade program and it is administered by USEPA, not the states. The provisions required the removal of 12.5 million tons of SO₂ from electric generating units, reducing SO₂ emissions by the year 2000 by roughly half. The federal Acid Rain SO₂ trading program does not mandate that a particular type of control be installed or that a particular

¹⁵ In the Matter of: Proposed New 35 Ill. Adm. Code 217.Subpart U, NO_x Control and Trading Program for Specified NO_x Generating Units, Subpart X, Voluntary NO_x Emissions Reduction Program, and Amendments to 35 Ill. Adm. Code 211, R01-17, April 17, 2001.

emission rate be met by electric generating units, but that all affected units must hold allowances at the end of the control period equal to SO₂ emissions for the control period. An allowance represents a ton of SO₂ emissions and is commonly referred to as a marketable emission reduction credit. USEPA allocates allowances as set forth in Title IV of the CAA and 40 CFR 73. The number of allowances that an affected unit will receive is allocated in perpetuity. There are, however, a small number of additional allowances available to units that repower or from the special reserve.

The CAIR SO₂ trading program builds on and coordinates with the federal Acid Rain SO₂ trading program to ensure that the required reductions in the CAIR are achieved and the efficacy of the federal Acid Rain SO₂ program is preserved. The CAIR SO₂ trading program is more stringent than the federal Acid Rain SO₂ program through the use of a more stringent compliance retirement ratio of SO₂ allowances. Two allowances per ton of emissions are required for control periods 2010 through 2014, and 2.86 allowances per ton of emissions are required for control period 2015 and thereafter. *See*, Exhibit A at 25291. The program also allows the use of banked SO₂ allowances allocated for years before 2010 to be used at a ratio of one allowance per ton of SO₂ emissions. This has the effect of cushioning the additional reductions needed to meet the CAIR SO₂ trading program in 2010.

The federal Acid Rain NO_x program under Title IV of the CAA specified a two-part strategy to reduce NO_x emissions from coal-fired electric power plants. Phase I was promulgated on April 13, 1995, and reduced NO_x emissions in the United States by 400,000 tons per year by 1999. Phase II began in 2000, and is expected to reduce emissions by 2.1 million tons per year. *See*, Exhibit C, *Nitrogen Oxides (NO_x) Reduction under Phase II of the Acid Rain Program*, U.S. Environmental Protection Agency, Clean Air Markets. The Acid Rain NO_x

program sets emissions limits for coal-fired boilers by type of boiler. Owners and operators of affected units may comply by either meeting the emission limit or through emissions averaging among two or more affected units. The NO_x emissions limits range from 0.40 lb/mmBtu for tangential boilers to 0.84 lb/mmBtu for wet bottom boilers. See, 40 CFR 76.

III. Sections 9.10 and 10 of the Act

A. Section 9.10 of the Act

In addition to requirements at the federal level that have identified emissions from fossil fuel-fired electric generating units as a major source of pollution, the General Assembly has also spoken to this issue. Section 9.10 of the Act recognizes and declares that:

- 1) the fossil fuel-fired electric generating units are a significant source of air emissions within the State ...;
- 6) the Governor's formation of an Energy Cabinet and the development of a State energy policy calls for actions by the Illinois EPA and the Board that are in harmony with the energy needs and policy of the State, while protecting the public health and environment;...
- 8) renewable forms of energy should be promoted as an important element of the energy and environmental policies of the State and that it is the goal of the State that at least 5 % of the State's energy production and use be derived from renewable forms of energy by 2010 and at least 15% from renewable forms of energy by 2020.

415 ILCS 5/9.10(a). The Act also called for a comprehensive review of the impact of these facilities on the environment within Illinois. Pursuant to Section 9.10(10)(b) of the Act, Illinois EPA presented a report to the General Assembly, entitled "Fossil Fuel-Fired Power Plants: Report to the House and Senate Environment and Energy Committees," September 2004. See, Exhibit D. The report evaluated several aspects included in Section 9.10 of the Act, and recommended that Governor demand that the federal government act nationally to address pollution from electric generating units and that States would have difficulty proceeding with

additional control of electric generating units until the national strategy was solidified and the timing was known. *Id.* Executive Summary at ix. The CAIR was promulgated on May 12, 2005, eight months after the report was published. While the report did not specifically conclude that a particular approach should be followed, the Act does states in pertinent part:

The Illinois EPA shall consider the impact on the public health, considering also energy supply, reliability and costs, the role of renewable forms of energy, and developments in federal law and regulations that may affect any state action, prior to making final decisions in Illinois. (emphasis added)

415 ILCS 5/9.10(b)(5). This proposal is an outgrowth of Section 9.10 of the Act and USEPA's CAIR.

B. Section 10 of the Act

Section 10(A) of the Act provides the Board's general authority for rulemaking addressing air pollution:

The Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations to promote the purposes of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe . . . ambient air quality standards . . . emissions standards . . . standards for issuance of permits . . .

415 ILCS 5/10(A). It is pursuant to this Section, and Sections 9.10 and 28.5 of the Act, that Illinois EPA is submitting this regulatory proposal. As discussed above, not only are the proposed regulations necessary to meet the State's obligations under the CAIR, they are also necessary to meet the State's obligations under the CAA to attain the two new NAAQS: 8-hour ozone and PM_{2.5}. With respect to PM_{2.5}, and as noted *supra*, USEPA has identified emissions of both NO_x and SO₂ as precursors to PM_{2.5} formation in the atmosphere. As part of the steps needed for Illinois to demonstrate attainment with the PM_{2.5} NAAQS, to reduce interstate transport, and to improve visibility, Illinois must adopt and implement certain regulations for

NO_x and SO₂ emissions that meet these federal requirements.

In reviewing the provisions of the Act, it is incumbent upon Illinois EPA to address the applicability, or lack thereof, of Section 10(B) of the Act. For reasons other than attainment of the SO₂ NAAQS, the proposed regulations would further address SO₂ emissions from electric generating units, a type of fuel combustion source, located throughout the State, including the three major metropolitan areas of Chicago, Peoria, and Metro-East/St. Louis.¹⁶ It may seem as though Section 10(B) is applicable. A closer reading, however, of that provision and subsequent regulatory and legislative history proves otherwise. Section 10(B) provides:

The Board shall adopt SO₂ regulations and emission standards for existing fuel combustion stationary emission sources located in all areas of the State of Illinois, except the Chicago, St. Louis (Illinois) and Peoria major metropolitan areas, in accordance with the following requirements:

(1) Such regulations shall not be more restrictive than necessary to attain and maintain the “Primary National Ambient Air Quality Standards for Sulfur Dioxide” and within a reasonable time attain and maintain the “Secondary National Ambient Air Quality Standards for Sulfur Dioxide.”

415 ILCS 5/10(B). Although Section 10(B) appears to apply to the SO₂ portion of the present rulemaking, such is not the case for several different reasons.¹⁷

1. The Purpose of Section 10(B) Has Been Met

Section 10(B) of the Act is not applicable to this rulemaking, since the purpose behind the statutory provision has been fulfilled. It is well-established that in construing a statute, the most fundamental rule is to give effect to the legislature’s intent, and the best evidence of that intent is the statutory language. That language must be given its plain and ordinary meaning, and

¹⁶ On April 4, 1995, USEPA approved the SIP revision necessary for the last remaining SO₂ nonattainment area in the Illinois to be redesignated to attainment of the NAAQS. 40 CFR § 52.724(h).

¹⁷ Section 10(B) of the Act was adopted as part of Senate Bill 1967, later P.A. 81-1370, effective August 8, 1980.

courts may not properly construe a statute by altering its language in a way that constitutes a change in the plain meaning of the words actually adopted by the legislature. If the statutory language is clear, a reviewing body must give effect to the plain and ordinary meaning without resorting to other construction aids. *See, U.S. Bank National Association v. Clark*, 216 Ill.2d 334, 346, 837 N.E.2d 74, 82 (2005).

The language of Section 10(B) is clear. The provisions were intended to limit the extent to which SO₂ emissions from fuel combustion sources outside of the three major metropolitan areas could be controlled, as Illinois EPA was moving forward with its attainment and maintenance strategies for the SO₂ NAAQS, following the adoption of the CAA Amendments of 1977. Accordingly, the General Assembly clearly gave the Board the authority to adopt two categories of regulations. First, the General Assembly stated that the Board would have the authority to adopt certain SO₂ regulations and emission standards for existing stationary fuel combustion emission sources located in all areas of the State except for the Chicago, Peoria and Metro-East/St. Louis major metropolitan areas. As to those “statewide” SO₂ regulations, the General Assembly’s language required in pertinent part that such regulations be no more restrictive than necessary to attain and maintain primary and secondary NAAQS for SO₂. 415 ILCS 5/10(B)(1).

Regarding the second purpose, the regulation of such sources in the three major metropolitan areas, the General Assembly clearly, by lack of any restriction or other conditions, left the criteria for regulation of such sources in the major metropolitan areas to the authority and discretion of the Board. *Id.* Again, this is consistent with the action of Illinois EPA to propose regulations that would address the nonattainment status in the major metropolitan areas. Effectively then, there were two different regulatory approaches that were envisioned and

created by the General Assembly; the first sought to impose SO₂ emissions standards for areas of the State other than the major metropolitan areas, and the second sought to allow for Illinois EPA and the Board to work in tandem to impose SO₂ emissions standards specifically tailored to the major metropolitan areas, which included areas in which the SO₂ NAAQS were not met or were threatened.

Setting aside for now the first purpose of Section 10(B), the second part of the statutory provision may be examined. To address that second purpose, i.e., nonattainment in the major metropolitan areas, Illinois EPA proposed standard for SO₂ emissions from fuel combustion emission sources located within the major metropolitan areas.¹⁸ The proposal was received by the Board on December 1, 1980, or several months after the effective date of Section 10(B).

On February 24, 1983, the Board issued its final order for the adopted rule stemming from Illinois EPA's December 1980 proposal. *See, In the Matter Of: Sulfur Dioxide Emission Limitations: Rule 204 of Chapter 2*, R80-22, February 24, 1983. In the final order, the Board recognized that Illinois EPA's December 1980 proposal was in response to the legislative mandate (of Section 10(B) of the Act) that it review the SO₂ emission standards for existing fuel combustion emission sources located within the three major metropolitan areas and thereafter propose amendments, consistent with the CAA's NAAQS program, which would enhance the use of Illinois coal. Board Opinion, R80-22 at 1. Those final rules are now found in Part 214 of the Board's regulations. 35 Ill. Adm. Code Part 214, originally adopted as Rule 204.

By virtue of the completed rulemaking in R80-22, the Board and Illinois EPA fulfilled the second purpose of Section 10(B) as set forth by the General Assembly; namely, the Board adopted regulations for the three major metropolitan areas that addressed NAAQS for SO₂. Thus, that aspect of Section 10(B) has been met and no longer has any purpose.

¹⁸*See, In the Matter Of: Sulfur Dioxide Emission Limitations: Rule 204 of Chapter 2*, R80-22, February 24, 1983.

With respect to the first portion of Section 10(B), the Board was left with certain guidelines as to the nature of regulations affecting SO₂ emissions in the remainder of the State other than the major metropolitan areas. The Board was to adopt such regulations so long as they were no more restrictive than need to attain the NAAQS for SO₂. Again, it bears repeating that Section 10(B) of the Act was enacted in 1980; in 1983, the second purpose of the provision was met via the Board's adoption of the SO₂ emissions proposal in R80-22.

Prospectively from 1983, then, the only remaining function of Section 10(B) was to provide guidance in the adoption of SO₂-related regulations by the Board. A newer statutory provision has superseded Section 10(B) as to that limited purpose, and therefore all remaining purpose and effect of Section 10(B) has essentially ended, as discussed below.

2. Resolution of Section 9.10 and Section 10(B)

Moving forward over 20 years after the effective date of Section 10(B), the General Assembly again adopted legislation concerning regulation of SO₂ emissions. In 2001, the General Assembly adopted Section 9.10 of the Act pertaining to the regulation of electric generating units. 415 ILCS 5/9.10. Section 9.10(b)(2) directed Illinois EPA to propose regulations controlling SO₂ emissions from such sources:

. . . the Agency shall address the potential need for the control reduction of emissions from fossil fuel-fired electric generating plants, including the following provisions: (2) reduction of sulfur dioxide emissions, as appropriate, with consideration of maximum annual emissions rate limits or establishment of an emissions trading program and with consideration of developments in federal law and regulations that may affect any State action, prior to making final decisions in Illinois;

415 ILCS 5/9.10(b)(2). Section 9.10(c) also provides that:

Nothing in this Section is intended to or should be interpreted in a manner to limit or restrict the authority of the Illinois Environmental Protection Agency to propose, or the Illinois Pollution Control Board to adopt, any regulations applicable or that may be come

applicable to the facilities covered by this Section *that are required by federal law*.

415 ILCS 5/9.10(c) (*emphasis added*).

Given the passage of time since the effective date of Section 10(B), it is not at all surprising that the General Assembly imposed the report requirement upon Illinois EPA as set forth in Section 9.10 of the Act, as it recognized that additional knowledge was available concerning the chemistry of air pollution, and the availability of newer emissions control technologies are now available for the control of emissions. In addition, it is clear that the General Assembly fully intended that Illinois EPA should propose, and the Board should have the authority to adopt, regulations for the control of SO₂ emissions whose nature went far beyond the minimum needed for attainment of the SO₂ NAAQS, e.g., attainment of the PM_{2.5} NAAQS, reduction in interstate transport, and improvement in visibility. This is obvious because the State of Illinois was in full attainment of the SO₂ NAAQS when Section 9.10 was adopted. The Section 9.10 report in fact recognizes that the emissions of SO₂ need to be reduced for purposes other than compliance with the SO₂ NAAQS.

EGUs emit particulate matter directly into the air, and they release SO₂ and NO_x that are converted into sulfate and nitrate particulate matter in the atmosphere through complex chemical reactions. These emissions can be transported for hundreds of miles from Illinois and into Illinois. In Illinois, EGUs are responsible for 21 percent of particulate matter emissions, 27 percent of NO_x emissions, and 68 percent of SO₂ emissions.

Section 9.10 Report at 3. That being the case, while there may seem to be a conflict between Sections 9.10 and 10(B), insofar as Section 9.10 contemplates regulation of SO₂ emissions statewide for several different purposes based on Illinois EPA findings and Section 10(B) envisions a more restricted regulation of SO₂ emissions, a review of relevant case law shows that there is no such conflict.

It is presumed that the legislature, in enacting various statutes, acts rationally and with

full knowledge of all previous enactments. It is further presumed that the legislature would not enact a law that completely contradicts a prior statute without an express repeal of it and that statutes that relate to the same subject are to be governed by one spirit and a single policy. *See, Spina v. Toyota Motor Credit Corporation*, 301 Ill.App.3d 364, 376, 703 N.E.2d 484, 492 (1st Dist. 1998). Although one may attempt to argue that Section 10(B) would prevent regulation of SO₂ emissions uniformly and throughout the State (including the three major metropolitan areas described in Section 10(B)), Section 9.10 clearly gives the Board authority to regulate to the contrary. The question is how to reconcile both provisions.

In general, repeal of a previous enactment by implication through passage of a new law is not favored. Courts assume that the legislature will not draft a new law that contradicts an existing one without expressly repealing it, and that the legislature intends a consistent body of law when it amends or enacts new legislation. Thus, courts construe statutory provisions in a manner that avoids inconsistency and gives full effect to each provision wherever reasonably possible. *See, In re Marriage of Lasky*, 176 Ill.2d 75, 79-80, 678 N.E.2d 1035, 1037 (1997).

Applying those rules to the interplay of Sections 9.10 and 10(B), the appropriate conclusion to be drawn is that the General Assembly intended Section 10(B) to allow for the adoption of SO₂ regulations for the three major metropolitan areas, and also to provide a framework for other SO₂ emission-related regulations applicable to the remaining areas of the State. As a natural progression, over two decades later, the General Assembly revised its previous stance, seeking to take into account the change in conditions throughout the State, an the increase in knowledge concerning atmospheric chemistry, the health effects of pollution and the availability of new emission control technology, it enacted Section 9.10 which allowed for, *inter alia*, broad-based regulation of SO₂ emissions throughout the State with no specific

exclusion of the three major metropolitan areas identified in Section 10(B). This construction and interpretation of the statute gives meaning and purpose to both statutory provisions, and correctly places Section 9.10 as the applicable law for the present situation. Section 10(B)'s purpose in terms of directing regulation of SO₂ emissions was not without function in its historical context. However, it must be concluded that the General Assembly's intent for regulating SO₂ emissions has progressed to the broader instructions found in Section 9.10.

3. Section 10(B) Limited to SO₂ NAAQS

Section 10(B) of the Act is not an impediment to this rulemaking proposal as Section 10(B) has a limited scope. The only NAAQS that Section 10(B) addresses is the NAAQS for SO₂, as is plainly evidenced in Section 10(B)(1). In the proposed rulemaking, however, SO₂ would be regulated not in the context of compliance with SO₂ NAAQS, but rather in its role as a precursor to the formation of PM_{2.5}, a different pollutant, and to address the State's obligations under the CAA to control contributions to inter- and intra-state pollution transport, and improvement in visibility, all of which will improve the air quality for the citizens of Illinois. All of these purposes are consistent with the Board's authority pursuant to Section 10(A) of the Act, hence, regulation of SO₂ emissions as contemplated in this proposal is appropriate and not precluded by Section 10(B).

IV. GEOGRAPHIC REGION AND SOURCES AFFECTED

The geographic region subject to the CAIR is the entire State of Illinois. The proposed regulations are expected to affect existing and new electric generating units as described below. There are approximately 229 existing electric generating units that will be subject to the CAIR

NO_x Annual, the CAIR SO₂, and the CAIR NO_x Ozone Season trading programs. For the CAIR NO_x Annual, and the CAIR SO₂ trading programs existing units are those that commenced operation before January 1, 2006. For the CAIR NO_x Ozone Season trading program, existing units are those that commenced operation before May 1, 2006. Of these units, 170 are gas and oil fired boilers, 59 are coal-fired boilers, and the remainder are gas and oil-fired combustion turbines. Some coal-fired boilers have the capability to burn natural gas, fuel oil or both. Of the 59 coal-fired boilers, 34 are tangentially-fired, five are wall-fired, 18 are cyclone-fired boilers and one is a circulating fluidized bed boiler.

Most of the gas turbines operate on a simple cycle and operated primarily during the peak electricity demand periods. Therefore, capacity factors of most of the gas turbines are very low. Because of higher costs of gas and fuel oil per unit of heat input (i.e., btu) compared to coal, gas and fuel oil-fired units are expensive to operate and therefore, typically operate only during peak demand.

The proposed regulations are expected to affect existing electric generating units, and any new electric generating units that serve a generator greater than 25 megawatts, or any unit with a maximum design heat input that is greater than 250 mmBtu/hr and that has the potential to use more than 50% of the “potential electrical output capacity” and that sell electricity to the grid. If the size of the generator is greater than this number, the unit is an electric generating unit subject to this proposal. While gas-fired turbines typically have low emissions of SO₂, they are still required to comply with the requirements of the CAIR SO₂ trading program. In Illinois, emissions from oil and gas boilers and turbines are approximately 2,000 tons per year (TPY) of SO₂ as compared to 361,000 TPY of SO₂ from coal-fired boilers.

V. PURPOSE AND EFFECT OF THE PROPOSAL

A. Purpose

As discussed in detail *supra* this proposal has been prepared to satisfy a portion of the Illinois' obligations under the CAA to submit SIPs with control strategies necessary: to demonstrate attainment of the 8-hour ozone and PM_{2.5} NAAQS for the Metro-East/St. Louis and the greater Chicago nonattainment areas; to satisfy the requirements for Regional Haze; and to satisfy the requirements of the CAIR by implementing the CAIR SO₂, the CAIR NO_x Annual, and the CAIR NO_x Ozone Season trading programs.

B. The CAIR SO₂ Trading Program

Illinois is one of 25 States and the District of Columbia that have been found to contribute significantly to nonattainment of the NAAQS for PM_{2.5} in downwind states. *See*, Exhibit A at 25617. USEPA is requiring Illinois, as an upwind state, to revise its SIP to include control measures to reduce emissions of SO₂ because it is a precursor to PM_{2.5} formation. Reducing upwind precursor emissions will assist the downwind PM_{2.5} nonattainment areas in achieving the NAAQS. To meet the SO₂ emission reduction requirements, states have the option of either meeting an SO₂ budget as provided in the CAIR, or adopting the CAIR SO₂ trading program.

Regardless of which option a state chooses the emissions reductions are implemented in two phases. The first phase of SO₂ reductions begins with the 2010 control period (January 1, 2010 through December 31, 2010) and runs through the 2014 control period. The second phase of SO₂ reductions begins with the 2015 control period and each control period thereafter. Phase I requires a 50 percent reduction of SO₂ emissions from Acid Rain emission levels and Phase II

requires a 65 percent reduction of SO₂ emissions from Acid Rain emission levels.

The CAIR SO₂ budget is applicable only if a state chooses not to participate in the federal CAIR SO₂ trading program. The total annual CAIR SO₂ budget for Illinois is 192,671 tons of SO₂ per year for control periods 2010 through 2014. The total CAIR SO₂ budget for Illinois is 134,869 tons of SO₂ per year for control periods 2015 and thereafter.

Illinois EPA is proposing to participate in the CAIR SO₂ trading program; hence, the obligation to meet the SO₂ budgets is moot. The CAIR SO₂ trading program is an annual program, where the control period extends from January 1 through December 31 of each year, beginning January 1, 2010. The CAIR SO₂ trading program is coordinated with the federal Acid Rain program. The CAIR SO₂ trading program applies to large electrical generating units, those serving a generator of 25 megawatts (MW) or more that produce electricity for sale. It excludes certain cogeneration units that meet a capacity requirement and provide less than one-third of their power for sale to the grid. Each affected source is required to hold sufficient allowances to cover its SO₂ emissions for the applicable control period. The allowance transfer deadline is March 1 after the control period. Affected CAIR SO₂ units will receive SO₂ allowances directly from USEPA according to the allowance allocation set forth for the unit under the federal Acid Rain Program. Under the federal Acid Rain program, new units do not receive allowances. Treatment of new units will be the same under the CAIR SO₂ trading program.

The emission reductions result from tightening the retirement ratios for Acid Rain SO₂ allowances. The CAIR SO₂ trading program provides that instead of retiring one allowance per one ton of SO₂ emitted, a unit must retire allowances at a greater rate. A CAIR SO₂ allowance allocated for a control period in 2010 through 2014 is an authorization to emit 0.50 ton of SO₂; and a CAIR SO₂ allowance allocated for a control period 2015 or later is a limited authorization

to emit 0.35 ton of SO₂. These ratios may be different if there is a violation and allowances are deducted for compliance under 40 CFR § 96.254(b). A violation occurs when a source fails to hold sufficient allowances in its compliance account for a given control period by the allowance transfer deadline. In addition to retiring allowances for compliance, the allowances may also be traded, bought or sold on the open market. However, there is no inter-pollutant trading of allowances; a CAIR SO₂ allowance may not be used instead of a CAIR NO_x allowance or vice versa. With respect to Acid Rain SO₂ allowances allocated for control periods before the onset of the CAIR in 2010, they will retain their value as an authorization to emit one ton of SO₂, and may be banked for use in the CAIR program for control period 2010 and thereafter. This provides an incentive for sources to make early reductions.

To implement this program, Illinois EPA is proposing to incorporate by reference all provisions of the federal CAIR SO₂ trading program, except for the compliance and permitting provisions, whose provisions are set forth in Sections 225.310 and 225.320. The permits for the CAIR SO₂ trading program will be issued by Illinois EPA to affected sources and will include the compliance provisions, which mirror the federal requirements. This is similar to how the federal Acid Rain program is implemented in Illinois. Illinois EPA did have the option to adopt SO₂ opt-in provisions, which are provisions that would allow units that are not affected electrical generating units to participate in the CAIR SO₂ trading program. Illinois EPA is not proposing to adopt these provisions because administratively it is complex, to date no source has requested such an option, and regulation of SO₂ emissions from non-electric generating units will be addressed in later a rulemaking. With regard to the provisions for retired units, Illinois EPA has no flexibility as to the treatment of these units. The federal Acid Rain Program provides that such units receive allowances in perpetuity, and, as Illinois EPA has no discretion as to how

allowances are allocated under the federal Acid Rain Program. These units will continue to receive an Acid Rain SO₂ allocation.

C. The CAIR NO_x Annual Trading Program

Illinois is one of 25 States and the District of Columbia that have been found to contribute significantly to nonattainment of the NAAQS for PM_{2.5} in downwind states. *See*, Exhibit A at 25167. USEPA is requiring Illinois, as an upwind state, to revise its SIP to include control measures to reduce emissions of NO_x, on annual basis, because it is a precursor to PM_{2.5} formation. Reducing upwind precursor emissions will assist the downwind PM_{2.5} nonattainment areas in achieving the NAAQS. To meet the NO_x emission reduction requirements, states have the option of either meeting an annual NO_x budget as provided in the CAIR, or adopting the federal CAIR NO_x Annual trading program which also includes a NO_x budget for electric generating units.

Regardless of which option a state chooses, the emissions reductions are implemented in two phases. The first phase of NO_x reductions begins with the 2009 control period (January 1, 2009 through December 31, 2009) and runs through the 2014 control period. The second phase of NO_x reductions begins with the 2015 control period and each control period thereafter. Phase I requires a 48 percent reduction of NO_x emissions from the 2010 base case. Phase II requires a 66 percent reduction of NO_x emissions from 2015 base case. The total annual CAIR NO_x budget for Illinois is 76,230 tons of NO_x per year for control periods 2009 through 2014. The total CAIR NO_x budget for Illinois is 63,525 tons of NO_x per year for control periods 2015 and thereafter.

Illinois EPA is proposing to participate in the federal CAIR NO_x Annual trading program.

Under the CAIR, states choosing to participate in the CAIR NO_x Annual trading program must meet certain mandatory elements of the program, especially if the State requests automatic approval of its SIP. *See*, 40 CFR § 51.123. Required elements of the trading program include the following: requiring that large electrical generating units participate in the trading program; requiring these units to monitor emissions as specified under 40 CFR 75, subpart H (continuous emissions monitoring); requiring these units to amend their Clean Air Act Permit Program (CAAPP) operating permit or obtain a federally enforceable permit covering the elements of the trading program; requiring the source to have one designated representative that is responsible for certifying compliance for all units participating in all applicable CAIR trading programs and the federal Acid Rain program, if applicable; and requiring the designated representative to take responsibility for maintaining records and submitting reports required under the program. The proposed rule includes all required elements of the trading program with respect to electrical generating units and incorporates by reference 40 CFR 96, subpart AA (NO_x Annual Trading Program General Provisions) (excluding 40 CFR §§ 96.104, 96.105(b)(2), and 96.106), subpart BB (CAIR Designated Representative for CAIR NO_x Sources), subpart FF (CAIR NO_x Allowance Tracking System), subpart GG (CAIR NO_x Allowance Transfers), and subpart HH (Monitoring and Reporting). To implement this program, Illinois EPA is proposing to incorporate by reference all provisions of the federal CAIR NO_x trading program, as noted above, except for the allocation methodology, compliance and permitting provisions. The permits for the CAIR NO_x trading program will be issued by Illinois EPA to affected sources and will include the compliance provisions, which mirror the federal requirements. The proposal also incorporates by reference 40 CFR 75 (Continuous Emissions Monitoring) and 40 CFR 78 (Appeal Procedures).

The CAIR NO_x Annual trading program provides for flexibility in the areas of applicability, the CAIR NO_x allowance allocation methodology, and allocation of the Compliance Supplement Pool. For example, USEPA stated that SIPs may allow, but not require, non-electric generating units to opt-in to the annual trading program to obtain some of the reductions necessary to meet the state's budget if certain criteria were met. If non-electric generating units were allowed to opt-in, it might or might not result in additional emissions reductions. States also have discretion in determining their CAIR NO_x allowance allocation methodology, as long as they demonstrate they will meet their budget. Finally, USEPA created the Compliance Supplement Pool that states may elect to distribute through early reduction credits or through direct distribution if a hardship or a disruption in electricity supplied to the grid is demonstrated. The control period for the CAIR NO_x Annual trading program extends from January 1 through December 31 of each year, beginning with 2009. The trading program provides that one allowance is a limited authorization to emit one ton of NO_x. These ratios will be different if there is a violation and allowances are deducted for compliance under 40 CFR § 96.154(b). There is a violation if a source fails to hold sufficient allowances in its compliance account to cover its emissions for a given control period by the allowance transfer deadline.

In addition to retiring allowances for compliance, the allowances may also be traded, bought or sold on the open market. The allowance transfer deadline is March 1 after the control period. Affected CAIR NO_x units will receive CAIR NO_x allowances from Illinois EPA according to the allowance allocation methodology discussed below. However, there is no inter-pollutant trading of allowances, a CAIR NO_x allowance may not be used instead of a CAIR SO₂ allowance or vice versa. As discussed below, the proposed rule takes the opportunity to use all areas of discretion afforded by the CAIR NO_x trading programs, while still allowing affected

units to participate in a regional trading program.

1. Applicability

The CAIR NO_x Annual trading program applies to large electrical generating units, those serving a generator of 25 megawatts (MW) or more that produce electricity for sale. It excludes certain cogeneration units that meet a capacity requirement and provide less than one-third of their power for sale to the grid. Each affected source is required to hold sufficient allowances to cover its emissions for the applicable control period. USEPA also stated that non-electric generating units could not be included in the annual CAIR program, however states do have the option to allow these sources to voluntarily opt-in to the NO_x Annual trading program. Illinois EPA is not proposing to adopt these provisions because administratively it is complex, to date no source has requested such an option, and it will be necessary to obtain annual NO_x reductions from all large non-electric generating units in order to attain the PM_{2.5} NAAQS in both nonattainment areas and the 8-hour ozone NAAQS in the greater Chicago nonattainment area.

2. Use of Allowances

The CAIR NO_x Annual trading program provides states considerable flexibility on how they may allocate allowances. The areas of flexibility include: cost (e.g., free distribution or auction); frequency of distribution (e.g., permanent or periodically updating); basis for distributing the allowances (e.g., heat input or power output); and use of allowance set-asides, including the size of any set-asides (e.g., new-unit set-asides, energy efficiency and conservation or renewable energy set-asides units, set-asides for development of Integrated Gasification

Combined-Cycle (IGCC) generation, or set-asides for smaller units). See, Exhibit A at 25279.

USEPA states that it is leaving the decision on using set-asides up to the states, so that states may craft their allocation approach to meet their state-specific policy goals. Id. at 25279.

Illinois EPA is proposing that 70 percent of Illinois' CAIR NO_x allowances for each control period be directly allocated to existing electric generating units at no charge, that five percent of the Illinois' allowances be used for a new unit set-aside (NUSA), and that the remaining 25 percent of its allowances be used for a Clean Air Set-Aside (CASA) for certain projects. These projects include renewable energy, energy efficiency and conservation, and clean technology projects. In the case of both set-asides, if they are under-subscribed, Illinois EPA is also proposing to elect to retire the allowances to help attain and maintain the PM_{2.5} and 8-hour ozone NAAQS. This is consistent with the CAIR and USEPA guidance for "Guidance on Establishing an Energy Efficiency and Renewable Energy (EE/RE) Set-Aside in the NO_x Budget Trading Program (EE/RE Guidance)," and proposed guidance for the implementation of the PM_{2.5} NAAQS. See, Exhibit E.

According to the EE/RE Guidance, USEPA estimates that if all states in the NO_x SIP call region set-aside five percent of their allowances for energy efficiency (EE) or renewable energy (RE) projects, the region could see annual savings of \$5 billion in consumers' energy bills and \$150 million in air quality compliance costs. In addition, USEPA believes that such a set-aside would create 40,000 jobs. See, TSD 7.3.2. USEPA recommends that a set-aside for EE/RE range between five and 15 percent. See, TSD 8.1.5.2. Illinois EPA is proposing an EE/RE of 12 percent. An additional 11 percent of the CASA is for clean technology projects, which is consistent with USEPA's guidance for distributing allowances in that it gives the state the flexibility to distribute allowances in a preferential manner. In this case, Illinois EPA is giving

preferential treatment to sources that install pollution controls, upgrade facilities, or install IGCC or other clean coal boiler technology. The remaining two percent of the allowances are given to either EE/RE or clean technology projects that commence operation “early” – before 2012.

Other States have proposed or implemented EE/RE set-asides, including Indiana, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, and Ohio. See, Exhibit E. In addition to RE/EE projects, Illinois EPA sees great value in projects that reduce SO₂ and NO_x emissions. Preliminary air quality modeling demonstrates that significant additional SO₂ and NO_x reductions beyond those provided under the CAIR will be needed to achieve and maintain the PM_{2.5} and 8-hour ozone NAAQS. See, TSD 3.2.

Illinois EPA believes that the size of the NUSA, five percent, will be necessary to accommodate new power plants that have been permitted or for which permits are pending, but have not yet commenced construction. It currently has construction applications for at least four power plant projects, any one of which could request two-thirds of the NUSA for a given control period should the project be built. In addition, the proposal provides that allowances from the NUSA that are not allocated in for a given control period will accrue for future control periods, up to five times the number designated for a control period. If the number of allowances in the NUSA, after allocations have been made to new units, exceeds five times the designated amount, the Illinois EPA has the discretion to retire these allowances for air quality purposes. Pursuant to USEPA guidance: “Guidance on State Implementation Plan (SIP) Credits for Emission Reductions from Electric-Sector Energy Efficiency and Renewable Energy Measures,” states may take credit for retiring NO_x allowances. See, Exhibit F. The guidance specifically discusses credit retirement in the context of energy efficiency and conservation projects and renewable energy measures, but the result is applicable in this context as well.

Illinois EPA believes that the establishment and the project categories contained in the CASA are consistent with Governor Blagojevich's "Illinois Sustainable Energy Plan" and Department of Commerce and Economic Opportunity (DCEO) studies promoting cleaner, renewable energy alternatives for the State of Illinois. The Governor's envisions reducing electricity consumption by 25 percent of projected load growth by 2015. See, Exhibit G. In addition, Illinois EPA believes that it is good environmental policy to provide more allowances to sources that operate more efficiently, install air pollution control equipment, and upgrade their equipment.

Illinois EPA is proposing that allocations be based on gross electrical output for both new and existing affected units. A short look-back period is being used because it provides an incentive for efficient operations, which will result in fewer emissions per unit of power produced. See, TSD 8.1.1. We note that some sources do not currently have wattmeters installed to measure gross electrical output; for those sources the initial allocations for control periods 2009 through 2011 will be based on heat input and adjusted by a presumed 33 percent efficiency factor. In either case, the gross electrical output or the heat input average will be adjusted by a fuel weighting factor. Illinois EPA believes that it is appropriate to reduce the allocations to units that are oil or gas fired, as USEPA determined the regional budget and the state budgets based on heat input and type of fuel from existing electric generating units. The resulting adjustment factors are 1.0 for coal, 0.4 for gas, and 0.6 for oil. These factors reflect the inherently higher emission rate of coal-fired plants, and consequently the greater burden on coal plants to control emissions. See, TSD 9.2.1.

The proposal does provide 12 percent of the allowances for energy efficiency and conservation and renewable energy projects. This is consistent with both the General

Assembly's legislative intent under the Governor's Energy Policy and Section 9.10 of the Act:

8) renewable forms of energy should be promoted as an important element of the energy and environmental policies of the State and that it is the goal of the State that at least 5 % of the State's energy production and use be derived from renewable forms of energy by 2010 and at least 15% from renewable forms of energy by 2020.

415 ILCS 5/9.10. An additional 11 percent of the allowances will go to existing units that install or upgrade pollution control technology, or new sources of clean coal technology. It is appropriate to provide incentives for those technologies that will increase the production of clean power in Illinois or that will provide reductions in emissions of SO₂ and NO_x within the State. There is a further two percent set-aside provided to for projects that are implemented prior to 2012, and as discussed above, Illinois needs reductions sooner rather than later to meet the statutory deadlines for attainment of the 8-hour and PM_{2.5} NAAQS.

As part of working toward timely attainment of these NAAQS, Illinois EPA is also proposing retirement of the Compliance Supplement Pool. Given the difficulty that the State will face in attaining the PM_{2.5} and 8-hour ozone NAAQS, to have an additional 11,299 tons (for the annual NO_x program) emitted during the critical years that are being used to determine attainment is counter productive. Further, the State may take SIP credit for retirement of these allowances.

D. The CAIR NO_x Ozone Season Trading Program

Illinois is one of 25 States and the District of Columbia to contribute significantly to nonattainment of the NAAQS for ozone in downwind States. *See*, Exhibit A at 25167. USEPA is requiring Illinois, as an upwind State, to revise its SIP to include control measures to reduce emissions of NO_x because it is a precursor to ozone formation. Reducing upwind precursor emissions will assist the downwind 8-hour ozone nonattainment areas in achieving the NAAQS.

To meet the NO_x emission reduction requirements, states have the option of either meeting an ozone season NO_x budget as provided in the CAIR, or opting into the federal CAIR NO_x Ozone Season trading program which also includes a NO_x budget.

Regardless of which option a state chooses, the emissions reductions are implemented in two phases. The first phase of NO_x reductions begins with the 2009 control period (May 1, 2009 through September 30, 2009) and runs through the 2014 control period. The second phase of NO_x reductions begins with the 2015 control period and each control period thereafter. Phase I does not require a reduction of NO_x emissions beyond the NO_x SIP call emissions levels, as the allowance budget is identical, and Phase II requires a small percent reduction of NO_x emissions from NO_x SIP call emission levels.

Illinois EPA is proposing to participate in the federal CAIR NO_x Ozone Season trading program. Under the CAIR, states participating in the CAIR NO_x Ozone Season trading program must meet certain mandatory elements of the program, especially if the state requests automatic approval of its SIP. *See*, 40 CFR § 51.123. Required elements of the trading program include the following: requiring that large electrical generating units participate in the trading program; requiring these units to monitor emissions as specified under 40 CFR 75, subpart H (continuous emissions monitoring); requiring the units to amend their CAAPP or obtain a federally enforceable permit covering the elements of the trading program; requiring the source to have one designated representative that is responsible for certifying compliance for all units participating in all applicable CAIR trading programs and the federal Acid Rain program, if applicable; and requiring the designated representative to take responsibility for maintaining records and submitting reports required under the program.

The proposed rule includes all required elements of the trading program with respect to

electrical generating units and incorporates by reference 40 CFR 96, subpart AAAA (NO_x Ozone Season Trading Program General Provisions) (excluding 40 CFR §§ 96.304, 96.305(b)(2), and 96.306); subpart BBBB (CAIR Designated Representative for CAIR NO_x Ozone Season Sources); subpart FFFF (CAIR NO_x Ozone Season Allowance Tracking System); subpart GGGG (CAIR NO_x Ozone Season Allowance Transfers); and subpart HHHH (Monitoring and Reporting). To implement this program, Illinois EPA is proposing to incorporate by reference all provisions of the federal CAIR NO_x Ozone Season trading program, as noted above, except for the allocation methodology, compliance and permitting provisions. The permits for the CAIR NO_x Ozone Season trading program will be issued by Illinois EPA to affected sources and will include the compliance provisions.

The CAIR NO_x Ozone Season trading program provides for flexibility in the areas of applicability, CAIR NO_x Ozone Season allowance allocation methodology, and the amount and type of set-asides. For example, USEPA stated that SIPs may include non-electric generating units if such units were included under the NO_x SIP call trading program, and other non-covered units may opt-in under certain circumstances. States also have discretion in determining their CAIR NO_x Ozone Season allowance allocation methodology, as long as they demonstrate they will meet their budget.

With respect to inclusion of non-electric generating units, the CAIR provides that a state had an ongoing obligation to continue meeting the NO_x budget established for non-electric generating units and could do so through inclusion in the CAIR NO_x Ozone Season trading program. If such units are included, states are required to use the same NO_x budget for allocating allowances to these units that was established under the NO_x SIP call. States were not given the option of using a more restrictive budget with respect to these units nor were states

allowed to include the units in the CAIR NO_x Annual trading program. Because of these criteria, Illinois EPA has declined to include these units in the ozone season program. Illinois needs greater reductions on both a seasonal and annual basis from these units to attain the two new NAAQS and meet the RACT requirements for the new NAAQS. In the near future, Illinois EPA is planning on proposing a rate-based rule that would result in greater NO_x emissions reductions from these units on both an annual and seasonal basis.

Both the CAIR NO_x Annual and the CAIR NO_x Ozone Season trading programs provide states with the discretion of allowing “voluntary” opt-ins to these programs by sources other than electric generating units. Units that may opt-in are limited to those that burn fossil fuel, vent all emissions through a stack and meet the monitoring, recordkeeping and reporting requirements of 40 CFR 75. A non-electric generating unit would have been eligible to opt into the CAIR trading programs if they are included in a state’s trading provisions. However, the emissions rate that is associated with the number of allowances that would be allocated to such a unit did not represent reductions consistent with RACT or emissions reductions to meet other CAA requirements. Hence, Illinois EPA is not proposing to include these provisions to allow voluntary opt-ins because they would not improve air quality. In addition, there is an added administrative complexity associated with implementing these provisions that did not justify their inclusion in light of this lack of air quality benefit.

The CAIR NO_x Ozone Season trading program provides that one allowance is a limited authorization to emit one ton of NO_x. However, these ratios will be different if there is a violation and allowances are deducted for compliance under 40 CFR § 96.354(b). In addition to retiring allowances for compliance, the allowances may also be traded, bought or sold on the open market. The allowance transfer deadline is November 30 after the control period.

Affected units will receive NO_x Ozone Season allowances from Illinois EPA according to the allowance allocation methodology discussed above. There is no inter-pollutant trading of allowances, e.g., a CAIR NO_x Ozone Season allowance may not be used instead of a CAIR SO₂ allowance or vice versa. As discussed below, the proposed rule takes the opportunity to use all areas of flexibility afforded by the CAIR NO_x Ozone Season trading program.

The CAIR NO_x Ozone Season trading program mirrors the CAIR NO_x Annual trading program, except there are differences in control periods, transfer deadlines, and number of allowances available for allocation, budgets, and there is no Compliance Supplement Pool under the Ozone Season trading program. There is no difference in the budget for the CAIR NO_x ozone season and the NO_x SIP call program during the first phase (2009 through 2014); hence, USEPA did not include a Compliance Supplement Pool.

VI. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

A. SO₂ Technical Feasibility and Economic Reasonableness

SO₂ emissions from electric generating units in Illinois are regulated under the federal Acid Rain Program Phase I and Phase II. (Title IV of the CAA) The Acid Rain program set a permanent cap on SO₂ that may be emitted by electric generating units nationwide at a level of about one-half of the amount emitted in 1980. The CAIR is expected to reduce SO₂ emissions from these units an additional 3.5 million tons in 2010 and by 3.8 million tons in 2015. *See*, Exhibit A at 25165. In the CAIR and supporting documents, USEPA has determined that the control techniques required for electric generating units to comply with the CAIR SO₂ trading program are highly cost-effective, and are, thus, technically and economically reasonable. *See*, Exhibit A at 25165. Illinois EPA's technical staff has also analyzed the cost and impacts of the

interstate trading program on Illinois electric generating units. See generally, TSD. Illinois EPA's technical staff agrees with USEPA's assessment that large electric generating units can meet the requirements of the CAIR SO₂ trading program through a combination of control techniques such that compliance is both technically feasible and economically reasonable.

Control techniques for reducing SO₂ emissions from new or existing fossil fuel-fired electric generating units include physical coal cleaning to remove pyrites (inorganic sulfur compounds); chemical coal cleaning to remove pyrites and organic sulfur present in coal; switching to either natural gas or to low sulfur western coal; blending coal and limestone before combustion; dry scrubbing with limestone or lime slurry (also called spray dryer absorber); and flue gas desulfurization (FGD). See, TSD 5.1. Coal cleaning can result in SO₂ emission reductions ranging from 10 to 40 percent for physical coal cleaning and can result in SO₂ emission reductions ranging from 50 to 75 percent for chemical coal cleaning. Emissions reductions achieved through fuel substitution depend on the type of fuel, ranging from 50 to 80 percent from switching to low-sulfur coal to 98 to 100 percent from switching to natural gas. Emission reductions from dry SO₂ removal range from 60 to 85 percent for combustion of a limestone mixture to 90 to 98 percent when spray drying is used in conjunction. Other than fuel switching to natural gas, the greatest emission reductions of SO₂ are achieved through the use of a FGD, ranging from 90 to 98 percent reduction, regardless of the type used. See, TSD 5.1.

Cost data by control techniques for SO₂ are summarized in the TSD. See, TSD 6.1. Costs of coal cleaning processes varies from \$10.1/ton of coal (at 35 to 70 percent pyretic sulfur removal) to \$58.67/ton (at 99 percent pyretic sulfur and 24 to 72 percent organic sulfur removal). Cost data by FGD technology are summarized in Table 6-1 of the TSD. Cost data for FGD systems, expressed as electrical output, range from \$7.89 to \$14.36 mill/kWh for a lime FGD to

\$9.72 to \$63.82 mill/kWh for magnesium oxide FGDs. See, TSD 6.1.

In Illinois, electric utility units are currently using coal washing, blending low-sulfur western coal with higher sulfur eastern coal, and FGDs. Blending coal with limestone is not currently used in Illinois, but companies have submitted applications to Illinois EPA for its use at two boilers. See, TSD 5.1.

The cost effectiveness of SO₂ controls for Illinois' electric generating units will be \$500 to \$800 (1999\$) per ton of SO₂ reduced in the years 2010 through 2014, and \$700 to \$1200 (1999\$) per ton of SO₂ reduced in the year 2015 and the years thereafter. See, TSD Table 6-6. The 2015 costs are not based on the increment in reductions between 2010 and 2015. Illinois EPA relied upon the cost analyses performed by USEPA and believes that the cost effectiveness of controls for Illinois electric generating units will be similar. See, TSD 6.3.

B. NO_x Technical Feasibility and Economic Reasonableness

Currently NO_x emissions from electric generating units are regulated in Illinois under the federal Acid Rain Program (Title IV of the CAA), the NO_x SIP Call trading program as set forth in Subpart W of 35 Ill. Adm. Code Part 217, and a state rate-based rule set forth in Subpart V of 35 Ill. Adm. Code Part 217. Under Phase I of the federal Acid Rain program, NO_x emissions for affected units lb/mmBtu are limited to 0.45 lb/mmBtu and 0.50 lb/mmBtu for certain existing tangential and wall-fired boilers burning coal, respectively. Under Phase II, NO_x emissions are limited to 0.40 and 0.46 for these boilers. The limit for cyclone-fired boilers greater than 155 MW is 0.86 lb/mmBtu. However, in Illinois, any unit serving a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale was required to meet a NO_x emissions limit during the ozone season of 0.25 lb/mmBtu, beginning with the 2003 control

period. See, 35 Ill. Adm. Code 217, Subpart V. Under Subpart V, averaging among affected units to demonstrate compliance with the emission limit is allowed.

In 2000, Illinois adopted the federal NO_x SIP Call trading program. An initial NO_x emission budget for electric generating units was established based on an emission rate of 0.15 lb/mmBtu. The program commenced with the 2004 ozone season. Sources complied with this rule through either installation of add-on controls, or trading of NO_x allowances.

For the CAIR NO_x Annual and Ozone Season programs, the allowance allocation budget for 2009 was based on a NO_x emission rate of 0.15 lb/mmBtu and for 2015, 0.125 lb/mmBtu. For those sources that installed selective non-catalytic reduction (SNCR) with ammonia or urea injection or selective catalytic reduction with ammonia (SCR) to comply with the requirements of Subpart W (federal NO_x SIP Call trading program), it is anticipated that they can meet the requirements of the CAIR NO_x Annual trading program by operating the add-on controls year round. Compliance with the CAIR NO_x Ozone Season trading program during Phase I (2009 through 2014 control periods) is not anticipated to require additional control measures as the NO_x allocation budget for the years 2009 through 2014 is the same in Illinois, 30,701 tons for allocation.

However, for the annual program, sources that have not yet installed add-on controls are anticipated to either need to install add-on control or purchase additional allowances. USEPA has discussed in detail the various control technologies available to reduce NO_x emissions from electric generating units. See, TSD 5.2. These technologies include Combustion Tuning (CT), Burner-Out-of-Service (BOOS), Over Fire Air (OFA), Low NO_x Burners (LNB), Fuel Switching (low nitrogen coal or natural gas), Lean Flue Gas Reburn, , Selective Non-Catalytic Reduction (SNCR) and Selective Catalytic Reduction (SCR). Operational modifications such as BOOS,

OFA, and LNB can achieve NO_x reductions in a range of 10 to 25 percent for coal-fired boilers and 30 to 50 percent for gas and oil-fired boilers. Reburning can achieve NO_x reductions in a range of 50 to 60 percent for coal-fired boilers and gas and oil-fired boilers. Fuel switching from coal to natural gas or low nitrogen coal can achieve NO_x reductions in a range of 40 to 75 percent for all types of boilers. SNCR can achieve NO_x emission reductions in a range of 30 to 60 percent for all types of boilers. SCR can achieve NO_x reductions in a range of 75 to 90 percent for all types of boilers. See, TSD Table 5-2.

Tables 6-3, 6-4, and 6-5 of the TSD summarize the range of cost effectiveness of the various control options for each type and size of electric generating unit. See, TSD Tables 6-3, 6-4, and 6-5. For the control periods 2009 through 2014, assuming the cost effectiveness values for Illinois electric generating units are the same as that calculated by USEPA for the entire region impacted by the CAIR, there will be no additional cost associated with complying with the CAIR NO_x Ozone Season trading program because the Illinois' CAIR NO_x Ozone Season budget remains the same as the current NO_x SIP Call budget. For the CAIR NO_x Annual trading program, there will be an additional cost of \$500 per ton to operate these controls in the non-ozone season in 2009 through 2014 (October 1 through March 31). Finally, the cost effectiveness of annual and seasonal NO_x controls for Illinois electric generating units will be \$1,600 per ton of NO_x reduced in 2015 and thereafter. See, TSD 6.3.

Finally, Illinois EPA utilized the Integrated Planning Model (IPM) to evaluate the economic impact of the CASA and NUSA provisions included in this proposal. While Illinois EPA is proposing to reduce the number of NO_x allowances available for direct allocation to existing electric generating units, IPM modeling has shown that the reduction of allowances only minimally increases the costs discussed above. It is important to note that while 25 percent of

the allowances are being used for this set-asides, existing units are eligible to apply for these allowances for free if they install air pollution controls, build clean units, or implement other energy conserving or renewable energy projects. The IPM modeling did not address the potential use of any CASA allowances for the existing electric generating units and thus represents the worst-case scenario; it is, however, far more likely that future projects will be eligible for CASA use and thus further reduce cost. The CASA and NUSA will provide important public benefits in terms of encouraging energy efficiency, renewable energy, cleaner energy, and clean coal technology projects.

C. Projected Retail Electricity Prices

Retail electricity prices for the CAIR region are projected to increase minimally with the implementation of the CAIR. Trading allows electric generating units to meet the requirements of the CAIR in the most cost-effective manner, thus minimizing the costs passed onto consumers. Regional retail electricity prices are projected to be two to three percent higher with the CAIR. By 2020, CAIR regional retail electricity prices are projected to be 1.8 percent higher. In Illinois, the retail electricity prices are projected to increase 2.6 percent in 2010 and 4.3 percent in 2015 from implementation of the CAIR. However, by 2020, rates are expected to decrease 2.6 percent, to a net increase of 1.7 percent. See, TSD 6.4.

Illinois EPA also conducted additional modeling to determine the cost impact of the 25 percent CASA and five percent NUSA on electricity rates. The modeling results project that retail electricity rates will not change, and there was a slight change in average production costs. See, TSD Table 7.6. Based on the federal documents on CAIR NO_x and SO₂ control technology costs and applications, and NO_x and SO₂ removal effectiveness, as well as the results of the IPM

modeling runs, Illinois EPA believes that compliance with this proposal is both technically feasible and economically reasonable.

VII. COMMUNICATION WITH INTERESTED PARTIES

These new Subparts are being proposed after representatives of regulated sources and environmental groups have had an opportunity to review the proposal, discuss issues and provide comments to Illinois EPA. *See*, Exhibit H. Illinois EPA held weekly outreach meetings January 24, January 31, February 7, February 14, February 21, and February 28, 2006. In addition, the Illinois EPA offered to meet with smaller groups or individual power plants at their request. No requests were received. Illinois EPA received numerous comments from regulated sources and environmental groups. There were few if any comments on the SO₂ portions of the proposal; the comments by and large concerned the NO_x NUSA and CASA. Although there is agreement on a number of issues, some of the regulated sources do not agree with Illinois EPA's approach for allocations based on gross electrical output or the amount of the set-asides, although the environmental groups are generally supportive. Notably, the representatives of the power plants do not necessarily agree among themselves as to whether allowances should be allocated on heat input or gross electrical output or the amount of the set-asides. Points of agreement and disagreement are discussed below.

Illinois EPA believes that the proposal represents a sound approach in those areas of discretion provided in the CAIR NO_x Annual trading program and the CAIR NO_x Ozone Season program. As discussed above, Illinois EPA has little flexibility as to the implementation of the CAIR SO₂ trading program, and has proposed to adopt the CAIR SO₂ trading program as provided by USEPA. Illinois EPA is not electing to propose inclusion of opt-in units, as the

Illinois EPA intends to separately propose regulations for the SO₂ and NO_x emissions from sources other than the electric generating units. With respect to the CAIR NO_x Annual trading program and the CAIR NO_x Ozone Season trading program, Illinois EPA notes that as long as the state-wide emissions budgets are met, Illinois may, within the areas of flexibility made available in the CAIR, approach these rules in the manner it believes will best serve the interests of the State and its citizens.

A. Allocation Methodology

Illinois EPA received several comments with respect to using gross electrical output data, the shortness of the look-back period for determining allocations, treatment of retired units, and whether allowances should be sold. Several commenters expressed a concern about whether gross electrical output data would be available for determining allocations. The proposal requires that owners and operators of affected units install wattmeters and provide gross electrical data to Illinois EPA on a quarterly basis. However, Illinois EPA modified its initial proposal to provide that where owners and operators do not have gross electrical output data for the initial look-back period, heat input data will be used for the allocations for these first three control periods. For the allocations that Illinois EPA will make in October 2009 for control period 2012, it is proposing to use gross electric output data from 2007 and 2008 as reported to Illinois EPA no later than July 31, 2009.

Another commenter expressed a concern that a two year look-back period was too short to take into account outages for maintenance. In response to this comment, Illinois EPA changed the initial lookback period for the 2009, 2010, and 2011 control periods from using data only from 2004 and 2005, to allowing the use of data from the three highest control periods of 2001

through 2005, as companies did not have an opportunity to plan for the first allocation when scheduling outages. With respect to future allocations, the allocations will balance out. Because allocations are made annually and with a shorter look-back period, if a company has a planned outage in one control period, it will need and will receive fewer allowances for that control period, and since the company should have received allowances for that future outage year based on a higher rate of operation, it should have excess banked allowances from the outage year that it can use for the allocation year that reflects the prior outage. This is the benefit of using a short look back period as low and high usage years are more quickly accounted for.

A third commenter was concerned that sources that had installed pollution controls would be penalized if their efficiency was reduced. While efficiency may be lower with certain types of pollution controls, the reduction in emissions from the control equipment and the need for fewer allowances more than compensates for the loss in efficiency. Further, additional allowances are available from the CASA to sources that upgrade or install new pollution control equipment.

A fourth commenter requested that retired units receive permanent allocations as provided for in the federal Acid Rain program and USEPA's proposed allocation scheme for the CAIR trading programs. Illinois EPA declined to adopt this request in favor of having additional allowances available to units that are operating and need the allowances for compliance. The allocation does provide a glide path for retired units, as they will receive an allocation for approximately four years after the last year of operation. For example, a unit that ceases operation in 2010 would receive its last allocation in 2014.

Finally, a commentator requested that the allowances be auctioned or sold rather than distributed for no charge. Illinois EPA considered this approach but rejected it as the allowances

would have gone to the sources with the “deepest pockets” rather than those that provided power with lower emissions and higher efficiency. One of the purposes of this proposal is furthering energy efficiency and conservation and renewable energy projects, encouraging a more diverse universe of energy producers.

B. New Unit Set-Aside (NUSA)

Illinois EPA has received several comments concerning NUSA. One commenter preferred a smaller set-aside of two percent (as opposed to the five percent proposed) and that allocations be based on a permit limit, questioned the basis for 1.0 lb/MWh, and objected to the retirement of allowances if the NUSA is undersubscribed. Note, unlike the NO_x SIP Call, the recommended set-aside for new units under the CAIR is three percent not two percent. Another commenter raised a concern that the number of allowances in the NUSA prior to retirement was too small.

Illinois EPA believes that a five percent NUSA is appropriate for Illinois. We currently have a number of proposed projects that would, if any one of them were to proceed, need about two-thirds of the NUSA. In addition, unlike the NO_x SIP Call where the trading budget remained unchanged, the CAIR NO_x Annual and Ozone Season budgets are reduced by a small percent beginning in the 2015 control period. The 1 lb/MWh limit is based upon the average efficiency for a boiler of 33 percent times 3.413 mmBtu/MWh.

Initially, Illinois EPA proposed that the allowances that are not allocated from the NUSA be allowed to accrue for two control periods. However, one commentor requested that the accrual be five times the amount designated for a given control period, because of the number of new projects projected for the coming years. Illinois EPA revised its proposal to raise the

accrual number from twice the designated number per control period to five times the designated number of allowances.

Illinois EPA believes that retirement of unused allowances is appropriate after the NUSA has accumulated five years worth of allowances. Retirement of allowances, as discussed, above will further air quality goals and assist Illinois in meeting CAA requirements for rate-of-progress, attainment, and maintenance requirements.

C. Clean Air Set-Aside (CASA)

Illinois EPA has received a number of comments concerning the size of the CASA. One commenter objected to the size of the CASA stating that no information has been provided that justifies a CASA of this magnitude, it is an attainment measure that should be included in another rulemaking, and that it equates to an emission rate during Phase I of 0.1 lb/mmBtu and lower during Phase II. Another commenter asked if any other state had proposed a set-aside of 25 percent for energy efficiency, renewable energy, and clean technology projects. Another commenter questioned that as long as the allowances in the CASA are available for interstate trading, how air quality in Illinois will be improved.

With respect to whether creating the CASA will improve air quality, extensive modeling analysis has shown that Illinois will need to go significantly beyond the CAIR NO_x and SO₂ reductions to attain the PM_{2.5} and 8-hour ozone NAAQS. *See*, TSD 3.2. This set-aside, if unused, can be part of a larger plan to reach attainment. While it is true that the size of the set-aside does not equate to an equal amount of reduction, it will lead to an improvement in air quality as it will encourage more efficient and cleaner operating technologies to enter the market place. The flexibility under the CAIR allows Illinois EPA to use set-asides as a tool to promote

energy demand reductions and greener energy generation, while helping to meet attainment. Illinois EPA believes that demand for energy will increase, hence to ensure that there is a commensurate air quality improvement there must be a reduction in demand from energy from fossil fuel-fired plants, and an increase in renewable energy sources.

With respect to the size of CASA, the proposal designates 12 percent of the CAIR NO_x Annual and the CAIR NO_x Ozone Season budgets toward energy efficiency and renewable projects. Illinois EPA believes that the 12 percent set-aside is both consistent with USEPA's guidance and with Section 9.10 of the Act which provides that five percent of the State's energy production by 2010 and 15 percent of the State's energy production by 2020 should come from renewable energy, e.g., wind, biomass. The remaining 13 percent of the CASA is to encourage the adoption by existing electric generating units to install air pollution control equipment, to use cleaner technology, to operate more efficiently, and for the early adoption of any of the projects listed in CASA (prior to calendar year 2013).

D. Compliance Supplement Pool

Illinois EPA received comments from affected sources objecting to the retirement of the CAIR NO_x Annual trading program Compliance Supplement Pool and comments from an environmental group supporting the retirement of the Compliance Supplement Pool. The commenter for the affected sources indicated that allowances have a value to the sources of 28 million dollars. Illinois EPA has presented modeling indicating that neither the greater Chicago nor Metro-East nonattainment areas will attain the PM_{2.5} NAAQS by the attainment dates nor will the greater Chicago area attain the 8-hour ozone NAAQS by the attainment date. Moreover these areas will not reach attainment in 2018, 3½ years after the implementation of Phase II of

the CAIR SO₂ and NO_x trading programs. *See*, TSD 3.2. Illinois will need between 30 and 35 percent reductions of NO_x beyond the CAIR to achieve the current PM_{2.5} NAAQS. As was discussed above, controls for electric generating units and turbines are highly cost effective, hence, this is where reductions are being sought.

One commenter suggested the set-asides only be used if modeling shows an air quality benefit from these set-asides. A modeling demonstration would not be particularly instructive in this instance. The effect of emissions reductions are incremental and no measure alone will assure attainment. In addition to controls on electric generating units, Illinois EPA is considering, in addition to controlling NO_x emissions of large internal combustion engines, also controlling NO_x emissions from smaller engines and turbines, adopting NO_x RACT type emission requirements statewide for a number of source categories, adopting more stringent volatile organic material (VOM) limits for several categories and adding new categories, tightening the Emission Reduction Market System program, and adopting SO₂ RACT. At this point in time, the Illinois EPA intends to pursue these rulemakings before it seeks additional reductions in SO₂ or NO_x from electric generating units and while the State participates in a super-regional dialogue with LADCO and OTC states in a beyond – the CAIR strategy for electric generating units for the super-region. However, we note that controlling NO_x emissions from electric generating units remains by far the most cost effective control measure.

VIII. ILLINOIS EPA'S PROPOSAL

Subpart A: General Provisions:

Section 225.100 Severability

This section states that finding a Section, subsection or clause of Part 225 invalid does not affect the validity of the Part as a whole or any other Section, subsection or clause.

Section 225.120 Abbreviations and Acronyms

Illinois EPA proposes adding a section listing the abbreviations and acronyms used in the Part.

Section 225.130 Definitions

Illinois EPA proposes adding a section listing the definitions used in the Part. There are additional definitions that apply in Part 211 and 40 CFR 96. Illinois EPA believes that it is not appropriate to include these definitions in Part 211 because they only apply to the provisions in Part 225.

Boiler This definition is identical to the definition of *boiler* in the CAIR NO_x Annual, the CAIR SO₂, and the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

Bottoming-cycle cogeneration unit: This definition is identical to the definition of *bottoming-cycle unit* in the CAIR NO_x Annual, the CAIR SO₂, and the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

CAIR authorized account representative: This definition is consistent with the definition of *CAIR authorized account representative* in the CAIR NO_x Annual, the CAIR SO₂, and the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. This is the natural person authorized to transfer or dispose of allowances from a general account.

CAIR designated representative: This definition is consistent with the definition of *CAIR designated representative* in the CAIR NO_x Annual, the CAIR SO₂, and the CAIR NO_x Ozone

Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. If the source is required to comply with the requirements of all three programs, the same natural person must be the designated representative. In addition, if the unit is subject to the federal Acid Rain program, then their representative for the federal Acid Rain program must be the same natural person as for the CAIR trading programs.

CAIR NO_x compliance account: This definition applies only to Subparts D and E of this Part, and is consistent with the definition for *CAIR NO_x compliance account* in the CAIR NO_x Annual and the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102 and 96.302, respectively.

CAIR Trading Programs: This definition is consistent with the definition of *CAIR Trading Programs* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

Coal-fired: This definition is consistent with the definition of *coal-fired* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. For the purposes of Subparts D and E of this proposal, this definition is used to determine which fuel weighting factor should be used for certain allocations of CAIR NO_x allowances.

Cogeneration unit: This definition is identical to the definition of *cogeneration unit* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

Combined-cycle system: This definition is identical to the definition for *combined-cycle system* in 35 Ill. Adm. Code 211.312, and describes a type of emission unit subject to the proposal.

Combustion turbine: This definition is identical to the definition of *combustion turbine* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

Commence commercial operation: This definition is the substantially identical to the definition for *commence commercial operation* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. The only difference is that the provisions pertaining to opt-in units are not included, because provisions for opt-in units are not included in Illinois' proposal. This definition, however, is different from the definition for *commence commercial operation* that is found in 35 Ill. Adm. Code 211 for the NO_x SIP Call trading Program. Under the CAIR, the treatment of replacement units has changed, instead of retaining the commencement date of the old unit that it has replaced, the replacement unit's commencement date is the date that it begins generating electricity for sale.

Commence operation: This definition is the substantially identical to the definition for *commence operation* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. The only difference is the provisions pertaining to opt-in units are not included, because such units are not included in Illinois' proposal. This definition, however, is different from the definition for *commence operation* that is found in 35 Ill. Adm. Code 211 for the NO_x SIP Call trading Program. Under the CAIR, the treatment of replacement units has changed, instead of retaining the commencement date of the old unit that it has replaced, the replacement unit's commencement date is the date when it begins any process.

Common stack: This definition is identical to the definition of *common stack* in the

CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

Control period: This definition is consistent with the definition of *control period* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

Electric generating unit: This definition has been included in the proposal for clarity and defines which units may be affected by the provisions of Subparts C, D, and E.

Fossil fuel: This definition is identical to the definition of *fossil fuel* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. The term is used in distinguishing the type of electrical generating units that are subject to the proposal.

Fossil fuel-fired: This definition is identical to the definition of *fossil fuel-fired* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively.

Generator: This definition is identical to the definition of *generator* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. This term is used to set the applicability thresholds for electrical generating units that are subject to the proposal.

Gross electrical output: This definition has been included to define the way in which electrical output will be quantified for determining certain the CAIR NO_x allocations.

Heat input: This definition is identical to the definition of *heat input* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. It is the gross heating value of the fuel combusted in a

combustion device. However, this definition is different from the definition for *heat input* in 35 Ill. Adm. Code 211 for the NO_x SIP Call trading Program. Under the CAIR, the definition was amended to require that heat input data being used be determined by USEPA in accordance with 40 CFR 96, based on information provided to USEPA by the affected sources.

Higher heating value (HHV): This definition is used to specify the manner in which heat content of a fuel is to be measured when determining the rated efficiency of a unit.

Integrated gasification combined-cycle (IGCC) system: This definition describes a particular type of clean coal electric utility steam-generating unit that may be subject to the proposal and may be eligible for allowances from the CASA.

Nameplate capacity: This definition is identical to the definition for *nameplate capacity* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. However, this definition is different from the definition for *nameplate capacity* in 35 Ill. Adm. Code 211 for the NO_x SIP Call trading Program, in that the definition provides that the manufacturer's original nameplate designation may be adjusted for units that are derated or whose capacity is expanded.

Oil-fired: This definition is identical to the definition of *oil-fired* in the CAIR NO_x Annual and the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102 and 96.302, respectively. This term is used to determine the fuel-weighting factor for the CAIR NO_x allocations.

Potential electrical output capacity: This definition is identical to the definition of *potential electrical output capacity* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. It is used in part to distinguish cogeneration units that are subject to the proposal from units that are not

subject to the proposal.

Project sponsor: This definition is generally describes the persons who may apply for an allocation from the CASA.

Rated-energy efficiency: This definition is used for determining whether certain units are eligible to apply for an allocation from the CASA for highly efficient electrical generation.

Repowering: This definition is identical to the definition of *repowering* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. This term is used for determining the date that certain units commence operation or commence commercial operation.

Total energy output: This definition is identical to the definition of *total energy output* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. This term is used for determining allocations for cogeneration units under Subparts D and E.

Useful thermal output: This definition is identical to the definition of *useful thermal output* in the CAIR NO_x Annual, the CAIR SO₂, the CAIR NO_x Ozone Season trading programs, 40 CFR §§ 96.102, 96.202, and 96.302, respectively. This term is used for determining a portion of the allocations for cogeneration units.

Section 225.140 Incorporations by Reference

Illinois EPA proposes to add Section 217.140 to incorporate by reference portions of the CAIR SO₂, and the CAIR NO_x Annual and the CAIR NO_x Ozone Season trading programs, 40 CFR 96, subparts AAA (excluding §§ 96. 204 and 96.206), BBB, FFF, GGG and HHH (2005); 40 CFR 96, subpart AA (excluding 40 CFR §§ 96.104, 96.105(b)(2), and 96.106), subpart BB,

subpart FF, subpart GG, and subpart HH. (2005), and 40 CFR 96, subpart AAAA (excluding 40 CFR §§ 96.304, 96.305(b)(2), and 96.306), subpart BBBB, subpart FFFF, subpart GGGG, and subpart HHHH. (2005), respectively. In addition, Illinois EPA proposes to add 40 CFR 75 and 78.

The general provisions for the CAIR NO_x Annual trading program, the CAIR SO₂ trading program, and the CAIR NO_x Ozone Season trading program, are set forth in Subparts AA, AAA, and AAAA, respectively. These Subparts cover the general provisions of the rule, including the purpose, definitions, abbreviations, applicability, retired units, standard requirements, computation of time, and appeal procedures. 40 CFR §§ 96.104, 96.106, 96.105(b)(2), 96.204, 96.206, and 96.305(b)(2), have been excluded. 40 CFR §§ 96.104, 96.204, and 96.304, which address applicability, are excluded from this proposal as this is an area where states had flexibility to expand to scope of sources to be included in the CAIR NO_x trading programs. At a minimum, however, states' programs must include electric generating units serving a generator greater than 25 MWe. Illinois EPA's proposal also excludes 40 CFR §§ 96.105(b) and 96.305(b), as it has the discretion to determine allocations for the CAIR NO_x trading programs and this subsection would give a retired unit a permanent CAIR NO_x allocation. Illinois EPA's allocation scheme, as proposed, limits allocations to the CAIR NO_x units that have gross output data from the control period or periods four to five years prior to the applicable year. Illinois EPA's proposal also excludes 40 CFR §§ 96.106, 96.206, and 96.306 that address the standard requirements, as the proposal includes these requirements with the corresponding Illinois references.

Subparts BB, BBB, and BBBB of 40 CFR 96 cover the requirement to have a designated representative to handle the transfer of allowances for the CAIR NO_x Annual trading program,

the CAIR SO₂ trading program, and the CAIR NO_x Ozone Season trading program, respectively. Subparts FF, FFF, and FFFF of 40 CFR 96 address the CAIR allowance tracking systems for the CAIR NO_x Annual trading program, the CAIR SO₂ trading program, and the CAIR NO_x Ozone Season trading program, respectively. Subparts GG, GGG, and GGGG of 40 CFR 96, address the mechanism for transfers of allowances for the CAIR NO_x Annual trading program, the CAIR SO₂ trading program, and the CAIR NO_x Ozone Season trading program, respectively. Subparts HH, HHH, and HHHH of 40 CFR 96 set forth the monitoring and reporting requirements for the CAIR NO_x Annual trading program, the CAIR SO₂ trading program, and the CAIR NO_x Ozone Season trading program, respectively.

Part 75 of Title 40 of the Code of Federal Regulations addresses continuous emissions monitoring systems (CEMS), which is required of all the CAIR NO_x and the CAIR SO₂ units subject to these trading programs. Subpart A contains general provisions. Subpart B contains specific monitoring provisions and Subpart C sets forth operation and maintenance requirements for CEMS. Subpart D contains missing data substitution procedures, and Subpart E sets forth criteria for alternative monitoring systems. Subparts F and G cover recordkeeping and reporting, and Subpart H contains the NO_x mass emissions provisions.

Part 78 of Title 40 of the Code of Federal Regulations addresses the types of actions by USEPA that sources may appeal, including the deduction of allowances, transfer of allowances between accounts, correction of an error, finalization of control period emissions data, and approval or disapproval of a monitoring petition. These provisions apply to all three CAIR trading programs.

Subpart C: CAIR SO₂ Trading Program

Section 225.300 **Purpose**

Illinois EPA proposes to add new Subpart C that implements the CAIR SO₂ trading program, 40 CFR 96, to control the emissions of SO₂ from affected electrical generating units annually beginning in 2010 (January 1 through December 31 of each year).

Section 225.305 **Applicability**

This Section addresses the applicability of Subpart C. Subsection (a) provides that the Subpart applies to all fossil fuel-fired stationary boilers, combustion turbines or combined cycle systems, serving a generator having a nameplate capacity exceeding 25 MWe if such electricity is sold, excluding industrial boilers listed 35 Ill. Adm. Code 217. Appendix C. Subsection (b)(1) exempts cogeneration units if it meets the definition for a cogeneration unit and limits its electrical output. Subsection (b)(1) further provides that the January 1 after which a unit no longer qualifies a cogeneration unit it becomes subject to the requirements of this Subpart. Subsection (b)(2) exempts solid waste incineration units (SWI) that began operation after January 1, 1985, meet the definition of SWI in Section 129(g) of the CAA [42 U.S.C. 7429(g)], and have an average fuel consumption of non-fossil fuel exceeding 80 percent of its total fuel. Subsection (b)(2) further provides that the January 1 after a SWI unit no longer meets these requirements and consumes more than 20 percent fossil fuel, it will be subject to the requirements of this Subpart.

Section 225.310 **Compliance Requirements**

This Section specifies the compliance requirements for affected units. Subsection (a) provides that affected units must comply with this Subpart as well as with certain provisions of

40 CFR 96 (previously described). Subsection (b), which addresses permit requirements, states that the owner or operator of each source that has one or more affected units at the source must submit a complete application meeting the requirements of Section 225.320 for a “CAIR SO₂ permit” from Illinois EPA. The permit must have federally enforceable conditions covering the CAIR SO₂ trading program and must satisfy the permitting requirements elsewhere in this Subpart. Subsection (b) also requires the owner or operator to operate the affected unit or units in compliance with the CAIR SO₂ permit.

Subsection (c) addresses monitoring requirements. It requires the owner or operator to comply with the monitoring requirements of 40 CFR 75 (continuous emissions monitoring) and requires the designated representative to comply with the monitoring compliance certification and reporting requirements of 40 CFR 96, subpart HH, applicable to designated representatives. Subsection (c) also provides that compliance of each affected unit with the CAIR SO₂ emissions limitations will be determined pursuant to 40 CFR 96, subpart HHH.

Subsection (d) addresses emissions requirements. These include requiring the designated representative to hold sufficient CAIR SO₂ allowances for compliance deduction in the CAIR Systems Tracking account by March 31 of each year; determining when the affected unit is subject to the monitoring and emissions requirements; providing for automatic amendment of an affected unit’s CAIR SO₂ permit when USEPA records the allocation, transfer, or deduction of an allowance; and prohibiting an allowance from being used for a control period before the year for which the allowance is allocated.

Subsection (e) requires the owner or operator to retain certain documents, as follows: the account certificate of designated representative, which is a certification made by the designated representative, and supporting documentation which must be kept on site until superseded by a

new representation certificate that changes the designated representative; all emission monitoring information required to be maintained by 40 CFR 96, subpart HHH; copies of all reports compliance certifications, and other submissions and all records made or required under the CAIR SO₂ trading program or necessary to demonstrate compliance with the program's requirements; and copies of documents used to complete a CAIR SO₂ permit application and any other submission under the CAIR SO₂ trading program.

Subsection (f) contains the provisions governing liability. These include providing that a budget permit revision will not excuse a violation; that any provision that applies to an affected source also apply to the owner or operator of the affected source; that the owner, operator, and designated representative of one affected unit are not liable for any violation by any other affected unit of which they are not an owner, operator or designated representative, except with respect to requirements for affected units with a common stack; and procedures to be followed by the designated representative of an affected unit when the unit has excess emissions in a control period.

Section 225.315 Appeal Procedures

This Section sets forth the procedures of decisions by USEPA under the CAIR SO₂ trading program. These decisions include errors posting allowances to accounts or determinations of control period emissions data. Such decisions may be appealed pursuant to the procedures in 40 CFR 78. The procedures are the same for all three CAIR trading programs.

Section 225.320 Permit Requirements

This Section sets forth permitting requirements for affected units. Subsection (a) requires

each owner or operator of each source with an affected unit to submit a complete the CAIR SO₂ permit application, including all applicable CAIR SO₂ trading program requirements. The CAIR SO₂ permit must contain federally enforceable conditions that apply to each affected unit and provide that the CAIR SO₂ permit is a complete and segregable portion of the source's entire permit. Subsection (a) also prohibits the issuance of a CAIR SO₂ permit and the establishment of the CAIR SO₂ compliance account, until Illinois EPA and USEPA have received a complete "certificate of representation" for the designated representative.

Subsection (b) covers the CAIR SO₂ permit applications. It requires the owner or operator to submit to Illinois EPA a complete CAIR SO₂ permit application within the applicable time frames and to reapply for a CAIR SO₂ permit as required by this proposed Subpart and the Act. Subsection (b) also sets forth the following elements required for the CAIR SO₂ permit applications: identification of the source, identification of each affected unit at the source, compliance requirements and monitoring requirements of this Subpart.

Section 225.325 Trading Program

Section 225.325 sets forth USEPA's CAIR SO₂ allowance allocations for each control period pertaining to the CAIR SO₂ trading program. Subsection (a) provides that USEPA will allocate allowances pursuant to the federal Acid Rain program. Subsection (b) provides that a CAIR SO₂ allowance is a limited authorization to emit SO₂ during the calendar year that it is allocated and future control periods. It also provides the retirement ratios for SO₂ allowances, i.e., the number of allowances that must be retired for each ton of SO₂ emissions, in different control periods.

Subpart D: CAIR NO_x Annual Trading Program

Section 225.400 Purpose

Illinois EPA proposes to add new Subpart D to control NO_x emissions from affected electrical generating units during the annual control period (January 1 through December 31 of each year) by implementing the CAIR NO_x Annual trading program, 40 CFR 96, and setting forth provisions for allocation of the CAIR NO_x allowances.

Section 225.405 Applicability

This Section is substantially identical to Section 225.305.

Section 225.410 Compliance Requirements

This Section specifies the compliance requirements. Subsection (a) provides that affected units must comply with this Subpart as well as with certain provisions of 40 CFR 96 (previously described). Subsection (b), which addresses permit requirements, states that the owner or operator of each source that has one or more affected units at the source must submit a complete application meeting the requirements of Section 225.430 for a “CAIR NO_x permit” from Illinois EPA. The permit must have federally enforceable conditions covering the CAIR NO_x Annual trading program and must satisfy the permitting requirements elsewhere in this Subpart. Subsection (b) also requires the owner or operator to operate the affected unit or units in compliance with the CAIR NO_x permit.

Subsection (c) addresses monitoring requirements. It requires the owner or operator to comply with the monitoring requirements of 40 CFR 75 (continuous emissions monitoring) and requires the designated representative to comply with the monitoring compliance certification

and reporting requirements of 40 CFR 96, subpart HH, applicable to designated representatives. In addition, designated representatives are required to comply with the requirements of Section 225.450 for monitoring, reporting, and recordkeeping of gross electrical output and useful thermal energy, where applicable. Subsection (c) also provides that compliance of each affected unit with the emissions limitations will be determined pursuant to 40 CFR 96, subpart HH.

Subsection (d) addresses emissions requirements. These include requiring the designated representative to hold sufficient CAIR NO_x Annual allowances for compliance deduction in the CAIR NO_x Annual compliance account by March 31 of each year; determining when the affected unit is subject to the monitoring and emissions requirements; providing for automatic amendment of an affected unit's CAIR NO_x Annual permit when USEPA records the allocation, transfer, or deduction of an allowance; and prohibiting an allowance from being used for a control period before the year for which the allowance is allocated.

Subsection (e) requires the owner or operator to retain certain documents, as follows: the account certificate of designated representative, which is a certification made by the designated representative, and supporting documentation which must be kept on site until superseded by a new representation certificate that changes the designated representative; all emission monitoring information required to be maintained by 40 CFR 96, subpart HH; copies of all reports compliance certifications, and other submissions and all records made or required under the CAIR NO_x Annual trading program or necessary to demonstrate compliance with the program's requirements; copies of documents used to complete a CAIR NO_x permit application and any other submission under the CAIR NO_x Annual trading program; as well as all gross electrical output and useful thermal energy, as applicable, that is required to be maintained by Section 217.450.

Subsection (f) contains the provisions governing liability. These include providing that a revision to a CAIR NO_x Permit will not excuse a violation; that any provision that applies to an affected source also applies to the owner or operator of the affected source; that the owner, operator, and designated representative of one affected unit are not liable for any violation by any other affected unit of which they are not an owner, operator or designated representative, except with respect to requirements for affected units with a common stack; and procedures to be followed by the designated representative of an affected unit when the unit has excess emissions in a control period.

Section 225.415 Appeal Procedures

This Section is identical to Section 225.315.

Section 225.420 Permitting Requirements

This Section sets forth the permitting requirements for affected units. Subsection (a) requires each owner or operator of each source with an affected unit to submit a complete the CAIR NO_x permit application, including all applicable CAIR NO_x Annual trading program requirements. The CAIR NO_x permit must contain federally enforceable conditions that apply to each affected unit and provide that the CAIR NO_x permit is a complete and segregable portion of the source's entire permit. Subsection (a) also prohibits the issuance of a CAIR NO_x permit and the establishment of the CAIR NO_x Annual Compliance account, until Illinois EPA and USEPA have received a complete "certificate of representation" for the designated representative.

Subsection (b) covers the CAIR NO_x permit applications. It requires the owner or operator to submit to Illinois EPA a complete CAIR NO_x permit application within the

applicable time frames and to reapply for a CAIR NO_x permit as required by this proposed Subpart and the Act. Subsection (b) also sets forth the following elements required for the CAIR NO_x permit applications: identification of the source, identification of each affected unit at the source; and compliance and monitoring requirements of this Subpart.

Section 225.425 Annual Trading Budget

Subsection (a) of this Section provides that the total base CAIR NO_x Annual trading budget for control periods 2009 through 2014 is 76,230 tons of NO_x emissions or 76,230 NO_x Annual allowances. This subsection also provides that 30 percent of the budget will be allocated to set-asides, making 53,361 allowances available for routine allocation to existing units for each control period. Subsection (a) also provides that five percent of the CAIR NO_x Annual trading budget will be assigned to the new unit set-aside (NUSA). Twenty-five percent of the CAIR NO_x Annual trading budget will be assigned to the CASA.

Subsection (b) of this Section provides that the total base CAIR NO_x Annual trading budget for control period 2015 and thereafter is 63,525 tons of NO_x emissions. This subsection also provides that 30 percent of the budget will be allocated to set-asides, making 44,468 allowances available for routine allocation to existing units for each control period. Subsection (b) also provides that five percent of the CAIR NO_x Annual trading budget will be assigned to the NUSA. Twenty-five percent of the CAIR NO_x Annual trading budget will be assigned to the CASA.

Subsection (c) authorizes Illinois EPA to adjust the total base CAIR NO_x Annual trading budget appropriately, if USEPA subsequently makes adjustments to this budget.

Section 225.430 Timing for Annual Allocations

This Section provides the dates that Illinois EPA will submit the CAIR NO_x Annual allocations to USEPA. Subsection (a) provides that allocations for control periods 2009, 2010, and 2011 to existing affected units will be submitted by Illinois EPA to USEPA by October 31, 2006. Subsection (b) provides that by October 31, 2009, and every October thereafter, Illinois EPA will submit allocations for existing affected units for the control period three years after the date of submission. For example, in 2009, Illinois EPA will make allocations for 2012, and in 2010, Illinois EPA will make allocations for 2013, and so on. Subsection (c) provides that allocations from the NUSA will be made by February 15 in the year after the applicable control period. Subsection (d) provides that the allocations from the CASA will be made by December 1 in the year after the applicable control period.

Section 225.435 Methodology for Calculating Annual Allocations

This Section provides the methodology for calculating the distribution of allowances among affected units that are not entitled to allowances from the NUSA. The methodology is based on gross electrical output for a particular control period. Subsection (a) provides that for control periods 2009, 2010, and 2011, Illinois EPA will use the average of the three highest control periods between 2001 and 2005, if available. If fewer years are available, then the average will use fewer years. If gross electrical output data is not available for a unit, then Illinois EPA will use heat input to determine the average gross electrical output.

The average gross electrical output will then be weighted by fuel type to determine the unit's converted gross electrical output. For a unit that is coal-fired, the weighting is 1.0. The unit will be receive allocations based on 100 percent of its average gross electrical output. For

units that are oil-fired, the weighting is 0.6. The unit will be apportioned allocations based on 60 percent of its average gross electrical output. For units that are neither coal-fired nor oil-fired, the weighting is 0.4. The unit will be apportioned allocations based on 40 percent of its average gross electrical output.

Subsection (b) provides that for control periods 2012 and thereafter, Illinois EPA will use the average of the unit's gross electrical output from the two most recent control periods, if available, otherwise it will use the most recent control period's data. The average gross electrical output will then be weighted by fuel type to determine the unit's converted gross electrical output. Subsection (c) provides that a unit that also produces useful thermal energy, will be apportioned additional allowances. Converted gross electrical output based on a percentage of the unit's useful thermal energy weighted by the type of fuel will be added to the converted gross electrical output determined for a unit.

Subsection (d) provides that a unit's gross electrical output will be determined using the best available data reported or available to Illinois EPA, based on the monitoring and reporting requirements of Section 225.450. Subsection (e) provides that a unit's heat input will be based on the information provided to USEPA for the applicable control period.

Section 225.440 CAIR NO_x Annual Allocations

This Section sets forth for each control period the allowance allocations for affected units. Subsection (a) provides that Illinois EPA will allocate a total number of CAIR NO_x allowances equal to the CAIR NO_x budget available for allocation to units that have converted gross electrical output. Subsection (b) provides that Illinois EPA will allocate these allowances pro-rata based on the units' converted gross electrical. In cases where, it is not possible to allocate a

whole allowance, unallocated allowances will be retained by Illinois EPA and be available for allocation in for future control periods.

Section 225.445 New Unit Set-Aside (NUSA)

This Section establishes a NUSA for new affected units. “New” units are units that have commenced commercial operation on or after January 1, 2006, and have not yet operated so as to be entitled to receive an allocation for the particular control period under Section 225.440.

Subsection (a) requires Illinois EPA to establish a NUSA for each control period equal to five percent of the base CAIR NO_x Annual trading budget. Subsection (b) provides the procedures by which the designated representative may request allowances from the NUSA. The request may only be submitted after the unit has commenced commercial operation and has operated one control period. The request is due no later than January 15 after the applicable control period and must include the gross electrical output for the applicable control period.

Subsection (c) provides the methodology that Illinois EPA will use to determine allowance allocations from NUSA. Illinois EPA will use the average of the gross electrical output from the two most recent control periods, if available. Otherwise, it will use the gross electrical output from the most recent year. The average gross electrical output will then be weighted by fuel type to determine the unit’s converted gross electrical output, as discussed above. A unit that also produces useful thermal energy will receive additional allowances.

Illinois EPA will then allocate these allowances pro-rata based on the units’ converted gross electrical output. If the NUSA has allowances equal to or more than the sum of each new units’ unadjusted allocation, each unit will receive the number determined by its un-prorated allocation. If the NUSA has less than the sum of all such units’ un-prorated allocation, than each

new unit will receive allowances pro-rata using its un-prorated allocation. In cases where it is not possible to allocate a whole allowance, unallocated allowances will be retained by Illinois EPA and be made available for allocation for future control periods. Subsection (c) also provides that if it is later determined that a unit's gross electrical output or useful thermal energy was over reported, that Illinois EPA will reduce the unit's allocation from the NUSA for the current control period to account for the excess allowances received.

Subsection (d) provides that Illinois EPA will only accept applications that meet the requirements of NUSA or are adjusted to meet the requirements of NUSA. Subsection (e) provides that Illinois EPA will notify the designated representative no later than February 8 of the number of allowances, if any, that the unit will be allocated. Subsection (f) provides that Illinois EPA will report these allocations to USEPA no later than February 15. Subsection (g) provides that after a "new" unit has operated one control period, it becomes an existing unit for purposes of Sections 225.435 and 225.440, but will continue to receive allowances, if eligible from NUSA until it is eligible to use the allowances allocated under Section 225.440. Subsection (h) provides that if allowances remain in the NUSA after allocation requests have been met, the allowances will accrue. It further provides that Illinois EPA may retire allowances in excess of 19,080 (five years worth) for attaining and maintaining air quality standards under the CAA.

**Section 225.450 Monitoring, Record Keeping and Reporting for Gross Electrical
Output and Useful Thermal Output**

This Section sets forth the monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy. Subsection (a) provides that by January 1,

2007, or within the date that a unit commences commercial operation, the owner or operator of an affected unit will install, calibrate, maintain, and operate a wattmeter. It also provides that where heat input data is being used to determine an allocation, that the owner or operator comply with the applicable requirements of 40 CFR 75 for monitoring heat input.

Subsection (b) provides that by January 1, 2007, or by the date that a unit begins providing useful thermal energy operation, the owner or operator of an affected unit with process steam production shall install, calibrate, maintain, and operate measurement devices to determine steam flow, temperature, and pressure in PSI to measure and record the useful thermal energy in mmBtu/hr on a continuous basis; measure thermal energy in mmBtu/hr on a continuous basis; and record the output of the monitor.

Subsection (c) requires the designated representative of an affected unit shall report monthly data on a quarterly basis beginning with calendar year 2007. It also provides that if the data is available for control periods 2001 through 2005, that the data be provided to Illinois EPA by September 30, 2006. Subsection (d) provides that the owner or operator shall maintain a monitoring plan for gross electrical output. Subsection (e) provides that the owner or operator shall maintain the records and reports required by the Section for five years.

Section 225.455 Clean Air Set-Aside (CASA)

This Section establishes the CASA. Subsection (a) generally specifies the type of projects for which allowances can be obtained from the CASA and the requirement to submit an application to obtain any such allowances. Subsection (b) specifies that if a source is out of compliance with the requirements of this Subpart, i.e., the CAIR NO_x Annual trading program, it is not eligible for a CASA allocation for that control period. Subsection (c) provides that if

Illinois EPA receives two or more applications for the same project, that it will reject all applications. Subsection (d) provides that Illinois EPA will allocate allowances in accordance with the procedures in Section 225.475. Subsection (e) provides that two or more projects may be aggregated, that individually result in less than one allowance, but equal at least one allowance when aggregated. Further, it provides that Illinois EPA will not allocate allowances for projects that total less than one whole allowances.

Section 225.460 Energy Efficiency, Renewable Energy, and Clean Technology

This Section further describes the categories of projects that are eligible for allowances from the CASA. Subsection (a) addresses end-use energy efficiency projects. Subsection (b) addresses renewable energy projects. Subsection (c) addresses clean technology projects under the CAIR NO_x Annual trading program, NO_x allowances are available for installation of flue gas desulfurization devices and baghouses, which control SO₂ and PM emissions respectively, in addition to control devices for control of NO_x emissions. Subsection (d) excludes from eligibility nuclear power projects, or projects used to meet a State or federal statutory or regulatory requirement or one that are used to meet a requirement in a consent decree. This prohibition would not apply to measures taken to comply with this program and other trading programs, which do not directly limit emissions on a unit-by-unit basis. Subsection (e) provides for a circumstance where a sponsor submits an application for a projects that falls under the general CASA category, but is not specifically described or listed. Subsection (f) identifies types of projects that are eligible for allowances from the early adopter category.

Section 225.465 CASA Allowances

This Section establishes how CAIR NO_x allowances in the CASA will be distributed among projects types and the formula to use, based on project type, to determine the number of possible allowances to request. Subsection (a) provides the number of allowances available for distribution by project type and control period. Subsection (b) provides the equations for determining the number of allowances that a project sponsor may request for a particular project.

Section 225.470 CASA Applications

This Section establishes the procedures for submitting an application for allowances from the CASA. Subsection (a) provides the eligibility date for each type of project. Subsection (b) provides the application requirements. The application must be submitted by May 1 of the applicable control period, but after the first calendar year that the project has operated. The application must describe the project, the number of allowances requested, the name of the CAIR account representative, a certification by both the project sponsor and the account representative, and documentation on emissions reductions. Subsection (d) specifies the number of years that project sponsors may apply for allowances from the CASA for different types of projects. The renewal application must include the number of allowances with supporting documentation and a certification by the account representative. Subsection (e) requires the project sponsor to retain records of the CASA application and the supporting documentation for at least five years.

Section 225.475 Agency Action on CASA Applications

This Section establishes the procedures that Illinois EPA will use for allocation of allowances from the CASA. Subsection (a) provides that Illinois EPA will allocate allowances

pro-rata to eligible projects based on project category. Subsection (b) provides that if after all eligible requests have been met, allowances remain in the CASA, these allowances shall accrue for future CASAs. If a category reaches twice its designated amount, the excess shall be divided among the categories that have not doubled in value. The allowances will then be reallocated to those project categories to meet unfilled requests. If all categories have doubled, Illinois EPA may retire the excess allowances to attain or maintain air quality.

Section 225.480 Compliance Supplement Pool

This Section provides that Illinois EPA will retire 11,299 CAIR NO_x annual allowances that comprise Illinois' portion of the Compliance Supplement Pool for public health and air quality improvements.

Subpart E: CAIR NO_x Ozone Season Trading Program

Section 225.500 Purpose

Illinois EPA proposes to add new Subpart E to control NO_x emissions from affected electrical generating units during the ozone season control period (May 1 through September 30 of each year) by implementing the CAIR NO_x Ozone Season trading program, 40 CFR 96, and determining the CAIR NO_x Ozone Season allocations.

Section 225.505 Applicability

This Section is substantially identical to Section 225.305.

Section 225.510 Compliance Requirements

This Section specifies the compliance procedures for affected units. This Section is substantially identical to Section 225.410 except for the references. The following references are changed “CAIR NO_x permit,” “CAIR NO_x Annual trading program,” and “CAIR NO_x Annual allowances” to “CAIR NO_x Ozone Season permit,” “CAIR NO_x Ozone Season trading program,” and “CAIR NO_x Ozone Season allowances,” respectively, and the references to the 40 CFR 96, subparts AA through HH and corresponding sections, would be to 40 CFR 96 subparts AAAA through HHHH, and corresponding sections. A reference to Section 225.450 would be to Section 225.550. In subsection (d), the allowance transfer deadline is the November 30 after each control period.

Section 225.515 Appeal Procedures

This Section is identical to Section 225.315.

Section 225.520 Permitting Requirements

This Section sets forth the permitting requirements for affected units. The description of this Section is substantially identical to that for Section 225.420 above, except the references to “CAIR NO_x permit,” “CAIR NO_x permit application,” “CAIR NO_x Annual trading program,” and “CAIR NO_x Annual compliance account” are changed to “CAIR NO_x Ozone Season permit,” “CAIR NO_x Ozone Season permit application,” “CAIR NO_x Ozone Season trading program,” and “CAIR NO_x Ozone Season compliance account.”

Section 225.525 Ozone Season Trading Budget

Subsection (a) of this Section provides that the total base CAIR NO_x Ozone Season

trading budget for control periods 2009 through 2014 is 30,701. This subsection also provides that 30 percent of the budget will be allocated to set-asides, making 21,491 tons available for allocation to existing units for each control period. Subsection (a) also provides that five percent of the CAIR NO_x Ozone Season trading budget will be allocated to the NUSA. Twenty-five percent of the CAIR NO_x Ozone Season trading budget will be allocated to the CASA.

Subsection (b) of this Section provides that the total base CAIR NO_x Ozone Season Trading Budget for control period 2015 and thereafter is 28,981. This subsection also provides that 30 percent of the budget will be allocated to set-asides, making 20,287 tons available for allocation to existing units for each control period. Subsection (b) also provides that five percent of the CAIR NO_x Ozone Season trading budget will be allocated to the NUSA. Twenty-five percent of the CAIR NO_x Ozone Season Trading Budget will be allocated to the CASA.

Subsection (c) authorizes Illinois EPA to adjust the total base CAIR NO_x Ozone Season trading budget accordingly, if USEPA subsequently makes adjustments to this budget.

Section 225.530 Timing for Ozone Season Allocations

This Section provides the dates that Illinois EPA will submit the CAIR NO_x Ozone Season allocations to USEPA. Subsection (a) provides that allocations for control periods 2009, 2010, and 2011 to existing affected units, will be submitted by Illinois EPA, to USEPA by October 31, 2006. Subsection (b) provides that by July 31, 2009, and every July thereafter, Illinois EPA will submit allocations for existing affected units for the control period in three years after the date of submission. For example, in 2009, Illinois EPA will allocate allowances for the 2012 control period. Subsection (c) provides that allocations from the NUSA will be made by the November 15 after the applicable control period. Subsection (d) provides that the

allocations from the CASA will be made by December 1 after the applicable control period.

Section 225.535 Methodology for Calculating Ozone Season Allocations

This Section provides the methodology for calculating the allowances to be apportioned to affected units. This Section is substantially identical to Section 225.435, except that the applicable control period is from May 1 through September 30 of each calendar year.

Section 225.540 CAIR NO_x Ozone Season Allocations

This Section sets forth the allowance allocations for affected units for each control period. This Section is substantially identical to Section 225.440.

Section 225.545 New Unit Set-Aside (NUSA)

This Section establishes a NUSA for new affected units. “New” units are units that have commenced commercial operation on or after May 1, 2006, and have not yet received an allocation for the particular control period under Section 225.440. Subsection (a) provides that Illinois EPA will establish a NUSA for each control period with allowances equal to five percent of the base CAIR NO_x Ozone Season trading budget. Subsection (b) provides the method that the designated representative may request allowances from the NUSA. The request may only be submitted after the unit has commenced commercial operation and has operated one control period. The request is due no later than October 15 after the applicable control period and must include gross electrical output for the applicable control period.

Subsections (c), (d), and (g) are substantially identical to their counterparts in Section 225.445. Subsection (e) provides that Illinois EPA will notify the designated representative no

later than November 8 of the number of allowances, if any, that the unit will be allocated.

Subsection (f) provides that Illinois EPA will report these allocations to USEPA no later than November 15. Subsection (h) provides that if allowances remain in the NUSA after allocation requests have been met, the allowances will accrue. It further provides that Illinois EPA may retire allowances in excess of 19,080 (5 years worth) for attaining and maintaining air quality standards under the CAA.

Section 225.550 Monitoring, Record Keeping and Reporting for Gross Electrical Output and Useful Thermal Output

This Section sets forth the monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy. This Section is substantially identical to Section 225.450.

Section 225.555 Clean Air Set-Aside (CASA)

This Section establishes the CASA for the CAIR NO_x Ozone Season trading program. This Section is substantially identical to Section 225.455.

Section 225.560 Energy Efficiency, Renewable Energy, and Clean Technology

This Section defines the types of categories that are eligible for allowances from the Ozone Season CASA. This Section is substantially identical to Section 225.460, except that FGD and baghouse projects are not eligible for an allocation from the ozone season CASA.

Section 225.565 CASA Allowances

This Section establishes how CAIR NO_x Ozone Season allowances will be distributed among projects types and the formula to use, based on project type, to determine the number of possible allowances to request. This Section is substantially identical to Section 225.465, except the total number of allowances distributed reflects their proportional share of the Ozone Season Budget.

Section 225.570 CASA Applications

This Section establishes the procedures for submitting an application for allowances from the CASA. This Section is substantially identical to Section 225.470.

Section 225.575 Agency Action on CASA Applications

This Section establishes the procedures that Illinois EPA will use for allocation allowances from the CASA. This Section is substantially identical to Section 225.475.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL
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