BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED NEW CAIR SO_2, 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 SO_2, 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

IN THE MATTER OF:	)	
	)	
PROPOSED NEW CAIR SO_2, 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	)	

TABLE OF CONTENTS OF REGULATORY SUBMITTAL

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 SO_2 Trading Program, 40 CFR 96, subpart AAA (CAIR SO_2 Trading Program General Provisions, excluding 40 CFR §§ 96.204, and 96.206); 40 CFR 96, subpart BBB (CAIR Designated Representative for CAIR SO_2 Sources); 40 CFR 96, subpart FFF (CAIR SO_2 Allowance Tracking System); 40 CFR 96, subpart GGG (CAIR SO_2 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 SO_2 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 SO_2 and NOx 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/candlfslmopdata.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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PROPOSED NEW CAIR SO_2, CAIR NO_X	)	
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CODE 225, CONTROL OF EMISSIONS	)	
FROM LARGE COMBUSTION SOURCES,	)	
SUBPARTS A, C, D and E	)	

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

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Springfield, Illinois 62794-9276
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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: _____
John J. Kim
Managing Attorney, Air Regulatory Unit
Division of Legal Counsel

DATED: May 22, 2006
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
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PROPOSED NEW CAIR SO_2, CAIR NO_X	)	
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TRADING PROGRAMS, 35 ILL. ADM.	)	**(Rulemaking- Air)**
CODE 225, CONTROL OF EMISSIONS	)	
FROM LARGE COMBUSTION	)	
SOURCES, SUBPARTS A, C, D and E	)	

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

Douglas P. Scott
Director

DATED: May 22, 2006

1021 North Grand Ave. East
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Springfield, Illinois 62794-9276
217/782-3397

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
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CODE 225, CONTROL OF EMISSIONS	)	
FROM LARGE COMBUSTION SOURCES,	)	
SUBPARTS A, C, D and E	)	

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 SO_2, 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 PM2.5 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 SO_2 and NO_x. These SIPs are due on September 11, 2006.

5. The CAIR SO_2, 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 SO_2 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

DATED: May 22, 2006

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P.O. Box 19276
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IN THE MATTER OF:	)	
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CODE 225, CONTROL OF EMISSIONS	)	
FROM LARGE COMBUSTION SOURCES,	)	
SUBPARTS A, C, D and E	)	

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

Brenda Boehner

Notary Public

OFFICIAL SEAL
BRENDA BOEHNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-3-2009

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 SO_2 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

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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 SO_2, 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	)	

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 rues 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 SO_2 Trading Program, 40 CFR 96, subpart AAA (CAIR SO_2 Trading Program General Provisions, excluding 40 CFR §§ 96.204, and 96.206); 40 CFR 96, subpart BBB (CAIR Designated Representative for CAIR SO_2 Sources); 40 CFR 96, subpart FFF (CAIR SO_2 Allowance Tracking System); 40 CFR 96, subpart GGG (CAIR SO_2 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).

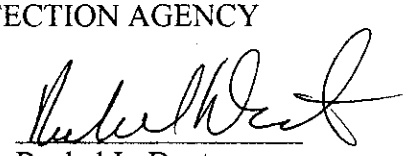
5. Section 27 (a) of the Environmental Protection Act (Act) requires Illinois EPA to provide information supporting the proposal. 415 ILCS 5/27 (a). In doing so, the Illinois EPA has provided documents in which were directly relied upon while drafting the regulatory proposal. The list of the documents 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 SO_2 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 SO_2 and NOx 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/candlfslmopdata.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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JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 – (312) 814-6026

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

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ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 5415 N. University St., Peoria, IL 61614 – (309) 693-5463
BUREAU OF LAND - PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 693-5462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61820 – (217) 278-5800
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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 SO_2, CAIR NO_x	)	R06- 26
ANNUAL, CAIR NO_x OZONE SEASON	)	(Rulemaking- Air)
TRADING PROGRAMS, 35 ILL. ADM.	)	
CODE 225, CONTROL OF EMISSIONS	)	
FROM LARGE COMBUSTION,	)	
SOURCES, SUBPARTS A, C, D and E	)	

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 (SO_2) and nitrogen oxides (NO_x) emissions from fossil fuel-fired electric generating units (affected units), on an annual basis (January 1 though 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) SO_2 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 SO_2 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.

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[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 PM2.5 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 PM2.5 standard. The Chicago nonattainment area, for purposes of the PM2.5 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 PM2.5 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, SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 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

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[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 (PM2.5) 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 SO_2 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 SO_2 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 SO_2 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 SO_2 reductions will start in 2010 (covering 2010-2014). Phase II for both NO_x and SO_2 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 SO_2 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 SO_2 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 SO_2 emitted. These allowances can be obtained either through a direct allocation from a state (NO_x allowances) or USEPA (SO_2 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 NOx 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 engines[13] 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.

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[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 SO_2 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 SO_2 from electric generating units, reducing SO_2 emissions by the year 2000 by roughly half. The federal Acid Rain SO_2 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 SO_2 emissions for the control period. An allowance represents a ton of SO_2 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 SO_2 trading program builds on and coordinates with the federal Acid Rain SO_2 trading program to ensure that the required reductions in the CAIR are achieved and the efficacy of the federal Acid Rain SO_2 program is preserved. The CAIR SO_2 trading program is more stringent than the federal Acid Rain SO_2 program through the use of a more stringent compliance retirement ratio of SO_2 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 SO_2 allowances allocated for years before 2010 to be used at a ratio of one allowance per ton of SO_2 emissions. This has the effect of cushioning the additional reductions needed to meet the CAIR SO_2 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 SO_2 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 SO_2 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 SO_2 NAAQS, the proposed regulations would further address SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 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" SO_2 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 SO_2. 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 SO_2 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 SO_2 emissions standards specifically tailored to the major metropolitan areas, which included areas in which the SO_2 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 SO_2 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 SO_2 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 SO_2. 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 SO_2 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 SO_2. 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 SO_2 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 SO_2-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 SO_2 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 SO_2 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 SO_2 emissions whose nature went far beyond the minimum needed for attainment of the SO_2 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 SO_2 NAAQS when Section 9.10 was adopted. The Section 9.10 report in fact recognizes that the emissions of SO_2 need to be reduced for purposes other than compliance with the SO_2 NAAQS.

> EGUs emit particulate matter directly into the air, and they release SO_2 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 SO_2 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 SO_2 emissions statewide for several different purposes based on Illinois EPA findings and Section 10(B) envisions a more restricted regulation of SO_2 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 SO_2 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 SO_2 regulations for the three major metropolitan areas, and also to provide a framework for other SO_2 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 SO_2 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 SO_2 emissions was not without function in its historical context. However, it must be concluded that the General Assembly's intent for regulating SO_2 emissions has progressed to the broader instructions found in Section 9.10.

3. Section 10(B) Limited to SO_2 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 SO_2, as is plainly evidenced in Section 10(B)(1). In the proposed rulemaking, however, SO_2 would be regulated not in the context of compliance with SO_2 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 SO_2 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 SO_2, and the CAIR NO_x Ozone Season trading programs. For the CAIR NO_x Annual, and the CAIR SO_2 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 SO_2, they are still required to comply with the requirements of the CAIR SO_2 trading program. In Illinois, emissions from oil and gas boilers and turbines are approximately 2,000 tons per year (TPY) of SO_2 as compared to 361,000 TPY of SO_2 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 SO_2, the CAIR NO_x Annual, and the CAIR NO_x Ozone Season trading programs.

B. The CAIR SO_2 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 SO_2 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 SO_2 emission reduction requirements, states have the option of either meeting an SO_2 budget as provided in the CAIR, or adopting the CAIR SO_2 trading program.

Regardless of which option a state chooses the emissions reductions are implemented in two phases. The first phase of SO_2 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 SO_2 reductions begins with the 2015 control period and each control period thereafter. Phase I requires a 50 percent reduction of SO_2 emissions from Acid Rain emission levels and Phase II

requires a 65 percent reduction of SO_2 emissions from Acid Rain emission levels.

The CAIR SO_2 budget is applicable only if a state chooses not to participate in the federal CAIR SO_2 trading program. The total annual CAIR SO_2 budget for Illinois is 192,671 tons of SO_2 per year for control periods 2010 through 2014. The total CAIR SO_2 budget for Illinois is 134,869 tons of SO_2 per year for control periods 2015 and thereafter.

Illinois EPA is proposing to participate in the CAIR SO_2 trading program; hence, the obligation to meet the SO_2 budgets is moot. The CAIR SO_2 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 SO_2 trading program is coordinated with the federal Acid Rain program. The CAIR SO_2 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 SO_2 emissions for the applicable control period. The allowance transfer deadline is March 1 after the control period. Affected CAIR SO_2 units will receive SO_2 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 SO_2 trading program.

The emission reductions result from tightening the retirement ratios for Acid Rain SO_2 allowances. The CAIR SO_2 trading program provides that instead of retiring one allowance per one ton of SO_2 emitted, a unit must retire allowances at a greater rate. A CAIR SO_2 allowance allocated for a control period in 2010 through 2014 is an authorization to emit 0.50 ton of SO_2; and a CAIR SO_2 allowance allocated for a control period 2015 or later is a limited authorization

to emit 0.35 ton of SO_2. 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 SO_2 allowance may not be used instead of a CAIR NO_x allowance or vice versa. With respect to Acid Rain SO_2 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 SO_2, 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 SO_2 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 SO_2 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 SO_2 opt-in provisions, which are provisions that would allow units that are not affected electrical generating units to participate in the CAIR SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 and NO_x emissions. Preliminary air quality modeling demonstrates that significant additional SO_2 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 SO_2 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 SO_2 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. SO_2 Technical Feasibility and Economic Reasonableness

SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 trading program through a combination of control techniques such that compliance is both technically feasible and economically reasonable.

Control techniques for reducing SO_2 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 SO_2 emission reductions ranging from 10 to 40 percent for physical coal cleaning and can result in SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 controls for Illinois' electric generating units will be $500 to $800 (1999$) per ton of SO_2 reduced in the years 2010 through 2014, and $700 to $1200 (1999$) per ton of SO_2 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 effectives 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 SO_2 control technology costs and applications, and NO_x and SO_2 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 SO_2 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 SO_2 trading program, and has proposed to adopt the CAIR SO_2 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 SO_2 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 it 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 commentor 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 SO_2 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 SO_2 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 SO_2 RACT. At this point in time, the Illinois EPA intends to pursue these rulemakings before it seeks additional reductions in SO_2 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2, 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 SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 Trading Program

Section 225.300 Purpose

Illinois EPA proposes to add new Subpart C that implements the CAIR SO_2 trading program, 40 CFR 96, to control the emissions of SO_2 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 SO_2 permit" from Illinois EPA. The permit must have federally enforceable conditions covering the CAIR SO_2 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 SO_2 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 SO_2 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 SO_2 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 SO_2 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 superceded 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 SO_2 trading program or necessary to demonstrate compliance with the program's requirements; and copies of documents used to complete a CAIR SO_2 permit application and any other submission under the CAIR SO_2 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 SO_2 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 SO_2 permit application, including all applicable CAIR SO_2 trading program requirements. The CAIR SO_2 permit must contain federally enforceable conditions that apply to each affected unit and provide that the CAIR SO_2 permit is a complete and segregable portion of the source's entire permit. Subsection (a) also prohibits the issuance of a CAIR SO_2 permit and the establishment of the CAIR SO_2 compliance account, until Illinois EPA and USEPA have received a complete "certificate of representation" for the designated representative.

Subsection (b) covers the CAIR SO_2 permit applications. It requires the owner or operator to submit to Illinois EPA a complete CAIR SO_2 permit application within the applicable time frames and to reapply for a CAIR SO_2 permit as required by this proposed Subpart and the Act. Subsection (b) also sets forth the following elements required for the CAIR SO_2 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 SO_2 allowance allocations for each control period pertaining to the CAIR SO_2 trading program. Subsection (a) provides that USEPA will allocate allowances pursuant to the federal Acid Rain program. Subsection (b) provides that a CAIR SO_2 allowance is a limited authorization to emit SO_2 during the calendar year that it is allocated and future control periods. It also provides the retirement ratios for SO_2 allowances, i.e., the number of allowances that must be retired for each ton of SO_2 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 superceded 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 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 compliances 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 SO_2 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.

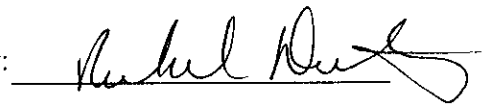
Section 225.570 CASA Applications

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
PROTECTION AGENCY

By: 

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Dated: May 22, 2006

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED NEW CAIR SO_2, 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	)	

SYNOPSIS OF TESTIMONY

It is currently anticipated that Illinois EPA will provide at least nine witnesses in support of the proposal: Gary Beckstead, David Bloomberg, Roston Cooper, Rory Davis, Rob Kaleel, Yoginder Mahajan, Jim Ross, and Jackie Sims. Jim Ross, Manager of the Division of Air Pollution Control, Bureau of Air, will provide an overview of the regulatory proposal and economic considerations. Rob Kaleel, Manager of the Air Quality Planning Section, Bureau of Air, will testify to the air quality modeling and the environmental benefits. Gary Beckstead, Manager of the Regulatory Unit, Air Quality Planning Section, Bureau of Air, will testify to other related regulatory programs. Yoginder Mahajan, Environmental Engineer, Regulatory Unit, Air Quality Planning Section, Bureau of Air will testify to the affected sources and technical feasibility of NO_x and SO_2 controls. Jackie Sims, Environmental Engineer, Compliance Unit, Compliance and Enforcement Section, Bureau of Air, will testify to the allocation methodology, including new unit set-asides. Rory Davis, Environmental Engineer, Regulatory Unit, Air Quality Planning Section, Bureau of Air, will provide additional testimony on the allocation methodology, including gross electrical output. Roston Cooper, Environmental Engineer, Permit Section, Bureau of Air, will testify to Clean Air Set-

Asides. David Bloomberg, Manager of the Compliance Unit, Compliance and Enforcement Section, Bureau of Air, will testify to the compliance, monitoring, recordkeeping and reporting provisions.

POLLUTION CONTROL BOARD

NOTICE OF PROPOSED RULE

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

PART 225
CONTROL OF EMISSIONS FROM LARGE COMBUSTION SOURCES

SUBPART A: GENERAL PROVISIONS

Section

SUBPART C: CAIR SO_2 TRADING PROGRAM

Section

SUBPART D: CAIR NO_x ANNUAL TRADING PROGRAM

Section

SUBPART E: CAIR NO_x OZONE SEASON TRADING PROGRAM

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

SOURCE: Adopted in Docket R06- at Ill. Reg. , effective , 2006.

SUBPART A: GENERAL PROVISIONS

Section 225.120 Severability

If any Section, subsection or clause of this Part is found invalid, such finding shall not affect the validity of this Part as a whole or any Section, sentence or clause not found invalid.

Section 225.103 Abbreviations

Unless otherwise specified within this Part, the abbreviations used in this Part shall be the same as those found in 35 Ill. Adm. Code 211. The following abbreviations and acronyms are used in this Part:

Act	Environmental Protection Act [415 ILCS 5 *et seq.*]
Btu	British thermal unit
CAA	Clean Air Act [42 U.S.C. 7401]
CAAPP	Clean Air Act Permit Program [415 ILCS 5/39.5]
CEMS	continuous emissions monitoring systems
EGU	electric generating unit
GO	Gross electrical output
HI	heat input
hr	hour
kg	kilogram
mmBtu	million Btu
MW	megawatt
MWe	megawatt electrical
MWh	megawatt hour
NO_x	nitrogen oxides
ORIS	Office of Regulatory Information Systems
O_2	oxygen
SO_2	sulfur dioxide
USEPA	United State Environmental Protection Agency
yr	year

Section 225.130 Definitions

The definitions contained in this Section apply only to the provisions of this Part. Unless otherwise defined in this Section and unless a different meaning of a term is clear from its context, the definitions of terms used in this Part shall have the meanings specified for those terms in 35 Ill. Adm. Code 211, and 40 CFR §§ 96.102, 96.202, and 96.302, as incorporated by reference in Section 225.140 of this Subpart.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"Bottoming-cycle cogeneration unit" means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject

heat from the useful thermal energy application or process is then used for electricity production.

"CAIR authorized account representative" means, with regard to general accounts, a responsible natural person who is authorized, in accordance with 40 CFR 96 subparts BB, BBB, and BBBB, to transfer and otherwise dispose of CAIR NO_x and SO_2 allowances, as applicable, held in the CAIR NO_x general account, and with regard to a CAIR NO_x compliance account, the CAIR designated representative of the source.

"CAIR designated representative" means for a CAIR NO_x source and a CAIR SO_2 source and each CAIR NO_x unit and CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with 40 CFR 96 subparts BB, BBB, and BBBB, as applicable, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Annual Trading Program, CAIR SO_2 Trading Program, and the CAIR NO_x Ozone Season Trading Program, as applicable. For any unit that is subject to one or more of the following programs: CAIR NO_x Annual Trading Program, the CAIR SO_2 Trading Program, the CAIR NO_x Ozone Season Trading Program, or the federal Acid Rain Program, the designated representative for such unit shall be the same natural person for programs all applicable to the unit.

"CAIR NO_x compliance account" means, for the purposes of Subparts D and E of this Part, a CAIR NO_x Allowance Tracking System account, established by USEPA for a CAIR NO_x source under 40 CFR 96 subparts FF and FFFF in which any CAIR NO_x allowance allocations for the affected units at the source are initially recorded and in which are held any CAIR NO_x allowances available for use for a control period in order to meet the source's CAIR NO_x emissions limitations in accordance with Sections 225.410 and 225.510 of this Part, and 40 CFR §§ 96.154 and 96.354, as incorporated by reference in Section 225.140 of this Subpart.

"CAIR Trading Programs" means the requirements of this Part, and those provisions of the federal CAIR NO_x Annual Season, CAIR SO_2, or CAIR NO_x Ozone Season Trading Programs set forth in 40 CFR 96, as incorporated by reference in Section 225.140 of this Subpart.

"Coal-fired" means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

"Cogeneration unit" means a stationary, fossil fuel-fired boiler or stationary, fossil fuel-fired combustion turbine:

a) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

b) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity:

1) For a topping-cycle cogeneration unit:

i) Useful thermal energy not less than 5 percent of total energy output; and

ii) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

2) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means:

An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

If the enclosed device under paragraph above is combined cycle, any associated heat recovery steam generator and steam turbine.

"Commence commercial operation" means, with respect to Subparts C, D and E of this Part, with regard to a unit serving a generator:

a) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as

provided in 40 CFR § 96.105, 96.205, or 96.305, as incorporated by reference in Section 225.140 of this Subpart.

1) For a unit that is an affected unit under 40 CFR § 96.104, 96.204 or 96.304 on the date the unit commences commercial operation on the later of November 15, 1990 or the date the unit commence commercial operation as defined in paragraph (a) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation, which shall continue to be treated as the same unit.

2) For a unit that is an affected unit under 40 CFR § 96.104, 96.204 or 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (a) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replace unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraphs (a) or (b) of this definition as appropriate.

b) Notwithstanding paragraph (a) of this definition and except as provided in 40 CFR § 96.105, 96.205, or 96.305 for a unit that is not an affected unit under 40 CFR § 96.104, 96.204 or 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (a) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes an affected unit under 40 CFR § 96.104, 96.204, or 96.304.

1) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

2) For a unit with a date for commencement of commercial operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replacement unit's date of commencement of commercial operation, and the replacement unit

shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (a) or (b) of this definition as appropriate.

c) Notwithstanding paragraphs (a) and (b) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

"Commence operation," for purposes of Subparts of C, D and E of this Part, means:

a) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in 40 CFR § 96.105, 96.205, or 96.305, as incorporated by reference in Section 225.140 of this Subpart.

1) For a unit that undergoes a physical change (other than replacement of the unit by a unit as the same source) after the date the unit commences operations as defined in paragraph (a) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

2) For a unit that is replaced by a unit at the same source (e.g., repowered), after the date the unit commences operation as defined in paragraph (a) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraphs (a) or (b) of this definition as appropriate.

b) Notwithstanding paragraph (a) of this definition and solely for the purposes of 40 CFR 96, subparts HH, HHH, and HHHH, for a unit that is not an affected unit under 40 CFR § 96.104, 96.204, or 96.304 on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (a) of this definition and subsequently becomes an affected uni, the unit's date for commencement of operation shall be the date on which the unit becomes an affected unit under 40 CFR § 96.104, 96.204, or 96.304.

1) For a unit with a date for commencement of operation as defined in

paragraph (b) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

2) For a unit with a date for commencement of operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraphs (a) or (b) of this definition as appropriate.

"Common stack" means a single flue through which emissions from two or more units are exhausted.

"Control period" means:

For the CAIR SO_2 and NO_x Annual Trading programs in Subparts C and D of this Part, the period beginning January 1 of a calendar year, except as provided in Sections 225.310(d)(3) and 225.410(d)(3) of this Subpart, and ending on December 31 of the same year, inclusive; or

For the CAIR NO_x Ozone Season Trading Program in Subpart E of this Part, the period beginning May 1 of a calendar year, except as provided in Section 225.510(d)(3) of this Subpart, and ending on September 30 of the same year, inclusive.

"Electric generating unit (EGU)" means a fossil fuel-fired stationary boiler, combustion turbine or combined cycle system that serves a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combusting any amount of fossil fuel, alone or in combination with any other fuel in any calendar year.

"Generator" means a device that produces electricity.

"Gross electrical output" means the total electrical output from an electric generating unit (EGU) before making any deductions for energy output used in any way related to the

production of energy. For an electric generating unit generating only electricity, the gross electrical output is the output from the turbine/generator set.

"Heat input" means, with regard Subparts C, D, and E of this Part, with regard to a specified period of time, the product (in mmBtu/hr) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded and reported to USEPA by the CAIR designated representative and determined by USEPA in accordance with 40 CFR 96, subpart HH, HHH, or HHHH , if applicable, and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Higher heating value (HHV)" means the total heat liberated per mass of fuel burned (Btu per pound), when fuel and dry air at standard conditions undergo complete combustion and all resultant products are brought to their standard states at standard conditions.

"Integrated gasification combined cycle (IGCC)" means a coal-fired electric utility steam generating unit that burns a synthetic gas derived from coal in a combined-cycle gas turbine. No coal is directly burned in the unit during operation.

"Nameplate Capacity" means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

"Oil-fired unit" means a unit combusting fuel oil for more than 15 percent of the annual heat input in a specified year and not qualifying as coal-fired.

"Project sponsor' means a person, including the owner or operator of an electric generating unit that implements or helps to implement an energy efficiency and conservation, renewable energy, or clean technology project as listed in Sections 225.460 and 225.560 of this Part.

"Potential electrical output capacity" means 33 percent of a unit's maximum design heat input, expressed in mmBtu/hr divided by 3.413 mmBtu/MWh, and multiplied by 8,760 hr/yr.

"Rated-energy efficiency" means the percentage of thermal energy input that is recovered as useable energy in the form of gross electrical output, useful thermal energy, or both that is used for heating, cooling, industrial processes, or other beneficial uses as follows:

For electric generators, rated energy efficiency is calculated as one kilowatt hour (3,413 Btu) of electricity divided by the unit's design heat rate using the higher heating value of the fuel, and expressed as a percentage.

For combined heat and power projects, rated-energy efficiency is calculated using the following formula:

$$REE = ((GO + UTE)/HI) \times 100$$

Where:

REE	=	Rated-energy efficiency, expressed as percentage.
GO	=	Gross electrical output of the system expressed in Btu/hr.
UTE	=	Useful thermal output from the system that is used for heating, cooling, industrial processes or other beneficial uses, expressed in Btu/hr.
HI	=	Heat input, based upon the higher heating value of fuel, in Btu/hr.

"Repowered" means, with regard to an electric generating unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

Atmospheric or pressurized fluidized bed combustion;

Integrated gasification combined cycle;

Magnetohydrodyamics;

Direct and indirect coal-fired turbines;

Integrated gasification fuel cells; or

As determined by the USEPA, a derivative of one or more of the technologies listed above, and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler generation efficiency

and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

"Total energy output" means, with respect to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

"Useful thermal energy" means, with regard to a cogeneration unit, the thermal energy that is made available to an industrial or commercial process, excluding any heat contained in condensate return or makeup water:

Used in a heat application (e.g., space heating or domestic hot water heating); or

Used in a space cooling application (e.g., thermal energy used by an absorption chiller).

Section 225.140 Incorporations by Reference

The following materials are incorporated by reference. These incorporations do not include any later amendments or editions.

a) CAIR SO_2 Trading Program, 40 CFR 96, subpart AAA (CAIR SO_2 Trading Program General Provisions, excluding 40 CFR §§ 96.204, and 96.206); 40 CFR 96, subpart BBB (CAIR Designated Representative for CAIR SO_2 Sources); 40 CFR 96, subpart FFF (CAIR SO_2 Allowance Tracking System); 40 CFR 96, subpart GGG (CAIR SO_2 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).

SUBPART C: CAIR SO_2 TRADING PROGRAM

Section 225.300 Purpose

The purpose of this Subpart is to control the emissions of sulfur dioxide (SO_2) from electric generating units (EGUs) annually by implementing the CAIR SO_2 Trading Program pursuant to 40 CFR 96, as incorporated by reference in Section 225.140 of this Subpart.

Section 225.305 Applicability

a) A fossil fuel-fired stationary boiler, combustion turbine or combined cycle system is an electric generating unit if it serves a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale and is not included in Appendix D of 35 Ill. Adm. Code Part 217. An electric generating unit is subject to the SO_2 Trading Program contained in this Subpart and is a CAIR SO_2 unit or an affected unit for the purposes of this Subpart.

b) Notwithstanding subsection (a) of this Section, an EGU shall not be an affected unit and is not subject to the CAIR SO_2 Trading Program contained in this Subpart if it meets the requirements of either subsection (b)(1)(A) or (b)(2)(A) of this Section, as follows:

1) A unit that:

A) Meets the definition of a cogeneration unit in Section 225.130 of this Part; and

i) Qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity, and continues to qualify as a cogeneration unit; and

ii) Does not serve at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 MWe, and which supplies in any calendar year more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to a utility power distribution system for sale.

B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to subsection (a) of this Section starting on the January 1 after which the unit first no longer qualifies as a cogeneration unit.

2) A unit that:

A) Qualifies as a solid waste incineration unit as defined by Section 129(g) of the CAA [42 U.S.C. § 7429(g)]; and

i) Commences operation on or after January 1, 1985; and

ii) Has an average annual fuel consumption of non-fossil fuel for the first three calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

B) If a unit qualifies as a solid waste incineration unit and meets the requirements of subsection (b)(2)(A) of this Section for at least three consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become an affected unit starting on the January 1 after which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Section 225.310 Compliance Requirements

a) The owner or operator of an affected unit shall comply with the requirements of the CAIR SO_2 Trading Program for Illinois as set forth in this Subpart and 40 CFR 96, subpart AAA (CAIR SO_2 Trading Program General Provisions,

excluding 40 CFR §§ 96.204, and 96.206); 40 CFR 96, subpart BBB (CAIR Designated Representative for CAIR SO_2 Sources); 40 CFR 96, subpart FFF (CAIR SO_2 Allowance Tracking System); 40 CFR 96, subpart GGG (CAIR SO_2 Allowance Transfers); and 40 CFR 96, subpart HHH (Monitoring and Reporting); as incorporated by reference in Section 225.140 of this Part.

b) Permit requirements:

1) The owner or operator of each source with one or more affected units at the source must apply for a permit issued by the Agency with federally enforceable conditions covering the CAIR SO_2 Trading Program ("CAIR SO_2 permit") that complies with the requirements of Section 225.320 of this Subpart (Permit Requirements).

2) The owner or operator of each affected source and each affected unit at the source must operate the affected unit in compliance with such CAIR SO_2 permit.

c) Monitoring requirements:

1) The owner or operator of each affected source and each affected unit at the source must comply with the monitoring requirements of 40 CFR 96, subpart HHH. The CAIR designated representative of each affected source and each affected unit at the affected source must comply with those sections of the monitoring requirements of 40 CFR 96, subpart HHH, applicable to the CAIR designated representative.

2) The compliance of each affected unit with the emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart HHH and 40 CFR 75.

d) Emission requirements:

1) By the allowance transfer deadline, March 1, 2011, and by March 1 of each subsequent year, the CAIR designated representative of each affected source and each affected unit at the source shall hold CAIR SO_2 allowances available for compliance deductions under 40 CFR §§ 96.254(a) and (b) in the affected source's CAIR SO_2 Allowance System Tracking account. The number of allowances held shall not be less than the tons of SO_2 emissions for the control period from all affected units at

the affected source, rounded to the nearest whole ton, as determined in accordance with 40 CFR 96, subpart HHH, plus any number of allowances necessary to account for actual utilization (e.g., for testing, start-up, malfunction, and shut down).

2) Each ton of SO_2 emitted by an affected unit in excess of the number of CAIR SO_2 allowances held by the owner or operator for each affected unit in its CAIR SO_2 Allowance System Tracking account for each control period shall constitute a separate violation of this Subpart and the Act.

3) Each affected unit shall be subject to the monitoring and compliance requirements of subsections (c)(1) and (d)(1) of this Section starting on the later of January 1, 2010, or the deadline for meeting the unit's monitoring certification requirements under 40 CFR § 96.270(b)(1) or (2).

4) CAIR SO_2 allowances shall be held in, deducted from, or transferred among allowance accounts in accordance with this Subpart and 40 CFR 96, subparts FFF and GGG.

5) In order to comply with the requirements of subsection (d)(1) of this Section, a CAIR SO_2 allowance may not be utilized for a control period in a year prior to the year for which the allowance is allocated.

6) A CAIR SO_2 allowance allocated by USEPA under the CAIR SO_2 Trading Program is a limited authorization to emit SO_2 in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR SO_2 permit application, the CAIR SO_2 permit, or a retired unit exemption under 40 CFR § 96.205, and no provision of law, shall be construed to limit the authority of the United States or the State to terminate or limit this authorization.

7) A CAIR SO_2 allowance allocated by USEPA under the CAIR SO_2 Trading Program does not constitute a property right.

8) Upon recordation by USEPA under 40 CFR 96, subpart FFF or 40 CFR 96, subpart GGG, every allocation, transfer, or deduction of an allowance to or from an affected source is deemed to amend automatically, and become a part of, any CAIR SO_2 permit of the affected source. This automatic amendment of the CAIR SO_2 permit shall be deemed an operation of law and will not require any further review.

e) Recordkeeping and reporting requirements:

1) Unless otherwise provided, the owner or operator of the affected source and each affected unit at the source shall keep on site at the source each of the documents listed in subsections (e)(1)(A) through (e)(1)(D) of this Section for a period of five (5) years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the Agency or USEPA.

A) The certificate of representation for the CAIR designated representative for the source and each affected unit at the source, all documents that demonstrate the truth of the statements in the certificate of representation, provided that the certificate and documents must be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under 40 CFR § 96.213, changing the CAIR designated representative.

B) All emissions monitoring information, in accordance with 40 CFR 96, subpart HHH.

C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO_2 Trading Program or documents necessary to demonstrate compliance with the requirements of the CAIR SO_2 Trading Program or with the requirements of this Subpart.

D) Copies of all documents used to complete a CAIR SO_2 permit application and any other submission under the CAIR SO_2 Trading Program.

2) The CAIR designated representative of an affected source and each affected unit at the source must submit to the Agency and USEPA the reports and compliance certifications required under the CAIR SO_2 Trading Program, including those under 40 CFR 96, subpart HHH.

f) Liability:

1) No revision of a permit for an affected unit shall excuse any violation of the requirements of this Subpart or the requirements of the CAIR SO_2 Trading Program.

2) Each affected source and each affected unit shall meet the requirements of the CAIR SO_2 Trading Program.

3) Any provision of the CAIR SO_2 Trading Program that applies to an affected source (including any provision applicable to the CAIR designated representative of an affected source) shall also apply to the owner and operator of such affected source and to the owner and operator of each affected unit at the source.

4) Any provision of the CAIR SO_2 Trading Program that applies to an affected unit (including any provision applicable to the CAIR designated representative of an affected unit) shall also apply to the owner and operator of such affected unit. Except with regard to the requirements applicable to affected units with a common stack under 40 CFR 96, subpart HHH, the owner, the operator, and the CAIR designated representative of an affected unit shall not be liable for any violation by any other affected unit of which they are not an owner or operator or the CAIR designated representative.

5) The CAIR designated representative of an affected unit that has excess SO_2 emissions in any control period shall surrender the allowances as required for deduction under 40 CFR § 96.254(d)(1).

6) The owner or operator of an affected unit that has excess SO_2 emissions in any control period shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Act and 40 CFR § 96.254(d)(2).

g) Effect on other authorities. No provision of the CAIR SO_2 Trading Program, a CAIR SO_2 permit application, a CAIR SO_2 permit, or a retired unit exemption under 40 CFR § 96.205 shall be construed as exempting or excluding the owner and operator and, to the extent applicable, the CAIR designated representative of an affected source or affected unit, from compliance with any other regulation promulgated under the CAA, the Act, any State regulation or permit, or a federally enforceable permit.

Section 225.315 Appeal Procedures

The appeal procedures for decisions of USEPA under the CAIR SO_2 Trading Program are set forth in 40 CFR 78, as incorporated by reference in Section 225.140 of this Part.

Section 225.320 Permit Requirements

a) Permit requirements:

1) The owner or operator of each source with an affected unit is required to submit a complete permit application addressing all applicable CAIR SO_2 Trading Program requirements for a permit meeting the requirements of this Section, applicable to each affected unit at the source. Each CAIR SO_2 permit shall contain elements required for a complete CAIR SO_2 permit application under subsection (b)(2) of this Section.

2) Each CAIR SO_2 permit shall contain federally enforceable conditions addressing all applicable CAIR SO_2 Trading Program and requirements and shall be a complete and segregable portion of the source's entire permit under subsection (a)(1) of this Section.

3) No CAIR SO_2 permit shall be issued and no CAIR SO_2 Allowance System Tracking account shall be established for an affected source, until the Agency and USEPA have received a complete certificate of representation for a CAIR designated representative or alternate designated representative under 40 CFR 96, subpart BBB, for an source and the affected unit at the source.

4) For all affected units that commenced operation before July 1, 2008, the owner or operator of such unit must submit a CAIR SO_2 permit application meeting the requirements of this Section on or before July 1, 2008.

5) For affected units and that commence operation on or after July 1, 2008, and that are and are not subject to Section 39.5 of the Act, the owner or operator of such units must submit applications for construction and operating permits pursuant to the requirements of Sections 39 and 39.5 of the Act, as applicable, and 35 Ill. Adm. Code 201 and such applications must specify that they are applying for CAIR SO_2 permits, and must address the CAIR SO_2 permit application requirements of this Section.

b) Permit applications:

1) Duty to apply. The owner or operator of any source with one or more affected units shall submit to the Agency a CAIR SO_2 permit application for the source covering each affected unit under subsection (b)(2) of this

Section by the applicable deadline in subsection (a)(4) or (a)(5) of this Section. The owner or operator of any source with one or more affected units shall reapply for a CAIR SO_2 permit for the source as required by this Subpart, 35 Ill. Adm. Code 201, and, as applicable, Sections 39 and 39.5 of the Act.

2) Information requirements for CAIR SO_2 permit applications. A complete CAIR SO_2 permit application shall include the following elements concerning the source for which the application is submitted:

A) Identification of the source, including plant name. The ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration shall also be included, if applicable;

B) Identification of each affected unit at the source; and

C) The compliance requirements applicable to each affected unit as set forth in Section 225.310 of this Subpart.

3) An application for a CAIR SO_2 permit shall be treated as a modification of the affected source's existing federally enforceable permit, if such a permit has been issued for that affected source, and shall be subject to the same procedural requirements. When the Agency issues a CAIR SO_2 permit pursuant to the requirements of this Section, it shall be incorporated into and become part of that affected source's existing federally enforceable permit.

Section 225.325 Trading Program

a) The CAIR SO_2 Trading Program is administered by USEPA. CAIR SO_2 allowances are determined by USEPA pursuant to the Acid Rain Program, Title IV of the CAA, 42 U.S.C. § 7651. The amount of such CAIR SO_2 allowances to be credited to an affected source's CAIR SO_2 Allowance Tracking System account for an affected unit shall be determined by USEPA.

b) A CAIR SO_2 allowance is a limited authorization to emit SO_2 during the calendar year for which the allowance is allocated or any calendar year thereafter under the CAIR SO_2 Trading Program as follows:

1) For a control period in a year before 2010, the retirement ratio shall be one ton of SO_2 to 1.0 CAIR SO_2 allowance, except as provided for in the compliance deductions under 40 CFR § 96.254(b);

2) For a control period in 2010 through 2014, the retirement ratio shall be one ton of SO_2 to 2.0 CAIR SO_2 allowances, except as provided for in the compliance deductions under 40 CFR § 96.254(b); and

3) For a control period in 2015 or later, the retirement ration shall be one ton of SO_2 to 2.86 CAIR SO_2 allowances, except as provided for in the compliance deductions under 40 CFR § 96.254(b).

SUBPART D: CAIR NO_x ANNUAL TRADING PROGRAM

Section 225.400 Purpose

The purpose of this Subpart is to control the annual emissions of nitrogen oxides (NO_x) from electric generating units (EGU) by determining allocations and implementing the CAIR NO_x Annual Trading Program.

Section 225.405 Applicability

a) A fossil fuel-fired stationary boiler, combustion turbine or combined cycle system is an electric generating unit if it serves a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale and is not included in Appendix D of 35 Ill. Adm. Code Part 217. An electric generation unit is subject to the NO_x Trading Program contained in this Subpart and is a CAIR NO_x unit or affected unit for the purposes of this Subpart.

b) Notwithstanding subsection (a) of this Section, an EGU shall not be an affected unit and is not subject to the NO_x Trading Program contained in this Subpart if it meets the requirements of either subsection (b)(1)(A) or (b)(2)(A) of this Section, as follows:

1) A unit that:

A) Meets the definition of a cogeneration unit in Section 225.130 of this Part; and

i) Qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and

continues to qualify as a cogeneration unit; and

ii) Does not serve at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 MWe, and which supplies in any calendar year more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to a utility power distribution system for sale.

B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to subsection (a) of this Section starting on the January 1 after which the unit first no longer qualifies as a cogeneration unit.

2) A unit that:

A) Qualifies as a solid waste incineration unit as defined by Section 129(g) of the CAA [42 U.S.C. § 7429(g)]; and

i) Commences operation on or after January 1, 1985; and

ii) Has an average annual fuel consumption of non-fossil fuel for the first three calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

B) If a unit qualifies as a solid waste incineration unit and meets the requirements of subsection (b)(2)(A) of this Section for at least three consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become an affected unit starting on the January 1 after which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Section 225.410 Compliance Requirements

a) The owner or operator of an affected unit shall comply with the requirements of

the CAIR NO_x Annual Trading Program for Illinois are set forth in this Subpart and 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); as incorporated by reference in Section 225.140 of this Part.

b) Permit requirements:

1) The owner or operator of each source with one or more affected units at the source must apply for a permit issued by the Agency with federally enforceable conditions covering the CAIR NO_x Annual Trading Program ("CAIR NO_x permit") that complies with the requirements of Section 225.420 of this Subpart (Permit Requirements).

2) The owner or operator of each affected source and each affected unit at the source must operate the affected unit in compliance with such CAIR NO_x permit.

c) Monitoring requirements:

1) The owner or operator of each affected source and each affected unit at the source must comply with the monitoring requirements of 40 CFR 96, subpart HH and Section 225.450 of this Subpart. The CAIR designated representative of each affected source and each affected unit at the affected source must comply with those sections of the monitoring requirements of 40 CFR 96, subpart HH, applicable to a CAIR designated representative.

2) The compliance of each affected unit with the NO_x emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart HH.

d) Emission requirements:

1) By the allowance transfer deadline, March 1, 2010, and by March 1 of each subsequent year, the allowance transfer deadline, the CAIR designated representative of each affected source and each affected unit at the source shall hold allowances available for compliance deductions

under 40 CFR § 96.154(a) in the affected source's CAIR NO_x compliance account. The number of allowances held shall not be less than the tons of NO_x emissions for the control period from all affected units at the source, rounded to the nearest whole ton, as determined in accordance with 40 CFR 96, subpart HH, plus any number of allowances necessary to account for actual utilization, including, but not limited to testing, start-up, malfunction, and shut down.

2) Each ton of NO_x emitted in excess of the number of CAIR NO_x allowances held by the owner or operator for each affected unit in its CAIR NO_x compliance account for each control period shall constitute a separate violation of this Subpart and the Act.

3) Each affected unit shall be subject to the monitoring and compliance requirements of subsections (c)(1) and (d)(1) of this Section starting on the later of January 1, 2009, or the deadline for meeting the unit's monitoring certification requirements under 40 CFR § 96.170(b)(1) or (b)(2).

4) CAIR NO_x allowances shall be held in, deducted from, or transferred among allowance accounts in accordance with this Subpart and 40 CFR 96, subparts FF and GG.

5) In order to comply with the requirements of subsection (d)(1) of this Section, a CAIR NO_x allowance may not be utilized for a control period in a year prior to the year for which the allowance is allocated.

6) A CAIR NO_x allowance allocated by the Agency or USEPA under the CAIR NO_x Annual Trading Program is a limited authorization to emit one ton of NO_x in accordance with the CAIR NO_x Trading Program. No provision of the CAIR NO_x Trading Program, the CAIR NO_x permit application, the CAIR NO_x permit, or a retired unit exemption under 40 CFR § 96.105, and no provision of law, shall be construed to limit the authority of the United States or the State to terminate or limit this authorization.

7) A CAIR NO_x allowance allocated by the Agency or USEPA under the CAIR NO_x Annual Trading Program does not constitute a property right.

8) Upon recordation by USEPA under 40 CFR 96, subpart FF or 40 CFR 96, subpart GG, every allocation, transfer, or deduction of an allowance to or from a CAIR NO_x source compliance account is deemed to amend

automatically, and become a part of, any CAIR NO_x permit of the affected source. This automatic amendment of the CAIR NO_x permit shall be deemed an operation of law and will not require any further review.

e) Recordkeeping and reporting requirements:

1) Unless otherwise provided, the owner or operator of the affected source and each affected unit at the source shall keep on site at the source each of the documents listed in subsections (e)(1)(A) through (e)(1)(E) of this Section for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the Agency or USEPA.

A) The certificate of representation for the CAIR designated representative for the source and each affected unit at the source, all documents that demonstrate the truth of the statements in the certificate of representation, provided that the certificate and documents must be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under 40 CFR § 96.113, changing the CAIR designated representative.

B) All emissions monitoring information, in accordance with 40 CFR 96, subpart HH.

C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Annual Trading Program or documents necessary to demonstrate compliance with the requirements of the CAIR NO_x Annual Trading Program or with the requirements of this Subpart.

D) Copies of all documents used to complete a CAIR NO_x permit application and any other submission under the CAIR NO_x Annual Trading Program.

E) Copies of all records and logs for gross electrical output and useful thermal energy required by Section 225.450 of this Subpart.

2) The CAIR designated representative of an affected source and each affected unit at the source must submit to the Agency and USEPA the reports and compliance certifications required under the CAIR NO_x

Annual Trading Program, including those under 40 CFR 96, subpart HH.

f) Liability:

1) No revision of a permit for an affected unit shall excuse any violation of the requirements of this Subpart or the requirements of the CAIR NO_x Annual Trading Program.

2) Each affected source and each affected unit shall meet the requirements of the CAIR NO_x Annual Trading Program.

3) Any provision of the CAIR NO_x Annual Trading Program that applies to an affected source (including any provision applicable to the CAIR designated representative of an affected source) shall also apply to the owner and operator of such affected source and to the owner and operator of each affected unit at the source.

4) Any provision of the CAIR NO_x Annual Trading Program that applies to an affected unit (including any provision applicable to the CAIR designated representative of an affected unit) shall also apply to the owner and operator of such affected unit. Except with regard to the requirements applicable to affected units with a common stack under 40 CFR 96, subpart HH, the owner, the operator, and the CAIR designated representative or alternate designated representative of an affected unit shall not be liable for any violation by any other affected unit of which they are not an owner or operator or the CAIR designated representative.

5) The CAIR designated representative of an affected unit that has excess emissions in any control period shall surrender the allowances as required for deduction under 40 CFR § 96.154(d)(1).

6) The owner or operator of an affected unit that has excess NO_x emissions in any control period shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Act and 40 CFR § 96.154(d)(2).

g) Effect on other authorities. No provision of the CAIR NO_x Annual Trading Program, a CAIR NO_x permit application, a CAIR NO_x permit, or a retired unit exemption under 40 CFR § 96.105 shall be construed as exempting or excluding the owner and operator and, to the extent applicable, the CAIR designated representative of an affected source or an affected unit, from compliance with any other regulation promulgated under the CAA, the Act, any State regulation or

permit, or a federally enforceable permit.

Section 225.415 Appeal Procedures

The appeal procedures for decisions of USEPA under the CAIR NO_x Annual Trading Program are set forth in 40 CFR 78, as incorporated by reference in Section 225.140 of this Part.

Section 225.420 Permit Requirements

a) Permit requirements:

1) The owner or operator of each source with an affected unit is required to submit a complete permit application addressing all applicable CAIR NO_x Annual Trading Program requirements for a permit meeting the requirements of this Section, applicable to each affected unit at the source. Each CAIR NO_x permit shall contain elements required for a complete CAIR NO_x permit application under subsection (b)(2) of this Section.

2) Each CAIR NO_x permit shall contain federally enforceable conditions addressing all applicable CAIR NO_x Annual Trading Program requirements and shall be a complete and segregable portion of the source's entire permit under subsection (a)(1) of this Section.

3) No CAIR NO_x permit shall be issued, and no CAIR NO_x compliance account shall be established for an affected source, until the Agency and USEPA have received a complete certificate of representation for a CAIR designated representative under 40 CFR 96, subpart BB, for the affected source and the affected unit at the source.

4) For all affected units that commenced operation before July 1, 2007, the owner or operator of such unit must submit a CAIR NO_x permit application meeting the requirements of this Section on or before July 1, 2007.

5) For all affected units and that commence operation on or after July 1, 2008, the owner or operator of such units must submit applications for construction and operating permits pursuant to the requirements of Sections 39 and 39.5 of the Act, as applicable, and 35 Ill. Adm. Code 201 and such applications must specify that they are applying for CAIR NO_x permits, and must address the CAIR NO_x permit application requirements of this Section.

b) Permit applications:

1) Duty to apply. The owner or operator of any source with one or more affected units shall submit to the Agency a CAIR NO_x permit application for the source covering each affected unit under subsection (b)(2) of this Section by the applicable deadline in subsection (a)(4) or (a)(5) of this Section. The owner or operator of any source with one or more affected units shall reapply for a CAIR NO_x permit for the source as required by this Subpart, 35 Ill. Adm. Code 201, and, as applicable, Sections 39 and 39.5 of the Act.

2) Information requirements for CAIR NO_x permit applications. A complete CAIR NO_x permit application shall include the following elements concerning the source for which the application is submitted:

A) Identification of the source, including plant name. The ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration shall also be included, if applicable;

B) Identification of each affected unit at the source; and

C) The compliance requirements applicable to each affected unit as set forth in Section 225.410 of this Subpart.

3) An application for a CAIR NO_x permit shall be treated as a modification of the affected source's existing federally enforceable permit, if such a permit has been issued for that source, and shall be subject to the same procedural requirements. When the Agency issues a CAIR NO_x permit pursuant to the requirements of this Section, it shall be incorporated into and become part of that source's existing federally enforceable permit.

Section 225.425 Annual Trading Budget

The CAIR NO_x Annual Trading budget available for allowance allocations for each control period shall be determined as follows:

a) The total base CAIR NO_x Annual Trading budget is 76,230 tons per control period for the years 2009 through 2014, subject to a reduction for two set-asides, the New Unit Set-Aside (NUSA) and the Clean Air Set-Aside (CASA). Five

percent of the budget shall be allocated to the NUSA and 25 percent shall be allocated to the CASA, resulting in a CAIR NO_x Annual Trading budget of 53,361 tons available for allocation per control period pursuant to Section 225.440 of this Subpart. The requirements of the NUSA are set forth in Section 225.445 of this Subpart, and the requirements of the CASA are set forth in Sections 225.455 through 225.470 of this Subpart.

b) The total base CAIR NO_x Annual Trading budget is 63,525 tons per control period for the year 2015 and thereafter, subject to a reduction for two set-asides, the NUSA and the CASA. Five percent of the budget shall be allocated to the NUSA and 25 percent shall be allocated to the CASA, resulting in a CAIR NO_x Annual Trading budget of 44,468 tons available for allocation per control period pursuant to Section 225.440 of this Subpart.

c) If USEPA adjusts the total base CAIR NO_x Annual Trading budget for any reason, the Agency shall adjust the base CAIR NO_x Annual Trading budget and the CAIR NO_x Annual Trading budget available for allocation, accordingly.

Section 225.430 Timing for Annual Allocations

a) By October 31, 2006, the Agency shall submit to USEPA the CAIR NO_x allowance allocations, in accordance with Sections 225.435 and 225.440 of this Subpart, for the 2009, 2010, and 2011 control periods.

b) By October 31, 2009, and October 31 of each year thereafter, the Agency shall submit to USEPA the CAIR NO_x allowance allocations in accordance with Sections 225.435 and 225.440 of this Subpart, for the control period three years after the year of the applicable deadline for submission under this Section. For example, on October 31, 2009, the Agency shall submit to USEPA the allocations for the 2012 control period.

c) The Agency shall allocate allowances from the NUSA to affected units that commence commercial operation on or after January 1, 2006. The Agency shall report these allocations to USEPA by February 15 after the applicable control period. For example, on February 15, 2010, the Agency shall submit to USEPA the allocations from the NUSA for the 2009 control period.

d) The Agency shall allocate allowances from the CASA to energy efficiency, renewable energy, and clean technology projects pursuant to the criteria in Sections 225.455 through 225.470 of this Subpart. The Agency shall report these allocations to USEPA by December 1 of each year. For example, on December,

1, 2010, the Agency shall submit to USEPA the allocations from the CASA for the 2010 control period, based on reductions made in the 2009 control period.

Section 225.435 Methodology for Calculating Annual Allocations

The Agency shall calculate converted gross electrical output (CGO), in MWh, for each affected unit that has operated during at least one calendar year prior to the calendar year in which the Agency reports the allocations to USEPA as follows:

a) For control periods 2009, 2010, and 2011, the unit's converted gross electrical output (CGO) shall be:

1) If the unit has four or five control periods of data, then the gross electrical output (GO) shall be the average of the unit's three highest gross electrical outputs from the 2001, 2002, 2003, 2004, or 2005 control periods. If the unit has three or fewer control periods of gross electrical output data, the gross electrical output shall be the average of those control periods. If the unit does not have gross electrical output for the 2004 and 2005 control periods, the gross electrical output shall be the gross electrical output data from the 2005 control period. If the unit does not have gross electrical output, heat input shall be used pursuant to subsection (a)(2) of this Section. If a generator is served by two or more units, the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the control period. The unit's converted gross electrical output (CGO) shall be calculated as follows:

A) If the unit is coal-fired:
CGO (in MWh) = GO × MWh × 1.0;

B) If the unit is oil-fired:
CGO (in MWh) = GO × MWh × 0.6;

C) If the unit is neither coal-fired nor oil-fired:
CGO (in MWh) = GO × MWh × 0.4.

2) If gross electrical output data is not provided to the Agency, heat input (HI) shall be used. If the unit has four or five control periods of data, the average of the unit's three highest heat input's from the 2001, 2002, 2003, 2004 or 2005 control period, shall be used. If the unit has heat inputs from the 2003, 2004, or 2005 control period, the heat input shall be the average

of those years. If the unit does not have heat input from the 2004 and 2005 control periods, the heat input from the 2005 control period shall be used. The unit's converted gross electrical output (CGO) shall be calculated as follows:

A) If the unit is coal-fired:
CGO (in MWh) = HI (in mmBtu) × 0.0967;

B) If the unit is oil-fired:
CGO (in MWh) = HI (in mmBtu) × 0.0580; or

C) If the unit is neither coal-fired nor oil-fired:
CGO (in MWh) = HI (in mmBtu) × 0.0387.

b) For control period 2012 and thereafter, the unit's gross electrical output shall be the average of the unit's two most recent years of control period gross electrical output, if available; otherwise the unit's most recent control period's gross electrical output. If a generator is served by two or more units, the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the control period. The unit's converted gross electrical output shall be calculated as follows:

1) If the unit is coal-fired:
CGO (in MWh) = GO × 1.0;

2) If the unit is oil-fired:
CGO (in MWh) = GO ×0.6; or

3) If the unit is neither coal-fired nor oil-fired:
CGO (in MWh) = GO × 0.4.

c) For a unit that is a combustion turbine or boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the Agency shall add the converted gross electrical output calculated for electricity pursuant to subsections (a) or (b) of this Section to the converted useful thermal energy (CUTE) to determine the total converted gross electrical output for the unit (TCGO). The Agency shall determine the converted useful thermal energy by using the average of the unit's control period useful thermal energy for the prior two control periods, if available, otherwise the unit's control period useful thermal output for the prior year shall be used. The converted useful thermal

energy shall be determined using the following equations:

1) If the unit is coal-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.2930;

2) If the unit is oil-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.1758; or

3) If the unit is neither coal-fired nor oil-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.1172.

d) The affected unit's gross electrical output and converted useful thermal energy in subsections (a)(1), (b), and (c) of this Section for each control period shall be based on the best available data reported or available to the Agency for the affected unit pursuant to the provisions of Section 225.450 of this Subpart.

e) The affected unit's heat input in subsection (a)(2) of this Section for each control period shall be determined in accordance with 40 CFR 75, as incorporated by reference in Section 225.140 of this Part.

Section 225.440 Annual Allocations

a) For the 2009 control period, and each control period thereafter, the Agency shall allocate CAIR NO_x allowances to all affected units in Illinois for which the Agency has calculated the total converted gross electrical output pursuant to Section 225.435 of this Subpart, a total amount of CAIR NO_x allowances equal to tons of NO_x emissions in the CAIR NO_x Annual Trading budget available for allocation as determined in Section 225.525 of this Subpart and allocated pursuant to Section 225.440 of this Subpart.

b) The Agency shall allocate CAIR NO_x allowances to each affected unit on a pro-rata basis using the unit's total converted gross electrical output calculated pursuant to Section 225.435 of this Subpart. If there are insufficient allowances to allocate whole allowances, such unallocated allowances shall be retained by the Agency and shall be available for allocation in later control periods.

Section 225.445 New Unit Set-Aside (NUSA)

For the 2009 control period and each control period thereafter, the Agency shall allocate CAIR NO_x allowances from the NUSA to affected units that commenced commercial operation on or after January 1, 2006, and do not yet have an allocation for the particular control period pursuant

to Section 225.440 of this Subpart, in accordance with the following procedures:

a) Beginning with the 2009 control period and each control period thereafter, the Agency shall establish a separate NUSA for each control period. Each NUSA shall be allocated CAIR NO_x allowances equal to 5 percent of the amount of tons of NO_x emissions in the base CAIR NO_x Annual Trading budget in Section 225.425 of this Subpart.

b) The CAIR designated representative of such an affected unit may submit to the Agency a request, in a format specified by the Agency, to be allocated CAIR NO_x allowances from the NUSA starting with the first control period in which the new unit commences commercial operation and until the first control period for which the unit may use CAIR NO_x allowances allocated to the unit under Section 225.440 of this Subpart. The NUSA allowance allocation request may only be submitted after a new unit has operated during one control period, and no later than January 15 after the control period for which allowances from the NUSA are being requested.

c) In a NUSA allowance allocation request under subsection (b) of this Section, the CAIR designated representative must provide in its request information for gross electrical output and useful thermal energy, if any, for the new affected unit for that control period.

d) The Agency shall allocate allowances from the NUSA to a new affected unit using the following procedures:

1) For each new affected unit that has operated in at least one control period, the unit's gross electrical output for the most recent control period shall be used to calculate the unit's gross electrical output. If a generator is served by two or more units, the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the control period. The new unit's converted gross electrical output shall be calculated as follows:

A) If the unit is coal-fired:
CGO (in MWh) = GO × 1.0;

B) If the unit is oil-fired:
CGO (in MWh) = GO × 0.6; or

C) If the unit is neither coal-fired nor oil-fired:

CGO (in MWh) = GO × 0.4.

2) If the unit is a combustion turbine or boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the Agency shall add the converted gross electrical output calculated for electricity pursuant to subsection (c)(1) of this Section to the converted useful thermal energy to determine the total converted gross electrical output for the unit. The Agency shall determine the converted useful thermal energy using the unit's useful thermal energy for the most recent control period. The converted useful thermal energy shall be determined using the following equations:

A) If the unit is coal-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.2930;

B) If the unit is oil-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.1758; or

C) If the unit is neither coal-fired nor oil-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.1172.

3) The gross electrical output and useful thermal energy in subsections (d)(1) and (d)(2) of this Section for each control period shall be based on the best available data reported or available to the Agency for the affected unit pursuant to the provisions of Section 225.450 of this Subpart.

4) The Agency shall determine a unit's un-prorated allocation (UA_y) using the unit's converted gross electrical output (CGO) plus the unit's converted useful thermal energy, if any, calculated in subsections (d)(1) and (d)(2) of this Section, converted to approximate NO_x tons (the unit's un-prorated allocation), as follows:

$$UA_y = \frac{TCGO_y * (1.0 lbs/MWh)}{2000 lbs/ton}$$

Where:

UA_y = un-prorated allocation to a new affected unit.

$TCGO_y$ = total converted gross electrical output for a new affected unit.

5) The Agency shall allocate CAIR NO_x allowances from the NUSA to new affected units as follows:

A) If the NUSA for the control period for which CAIR NO_x allowances are requested has a number of allowances greater than or equal to the total un-prorated allocations for all new units requesting allowances, the Agency shall allocate the number of allowances using the un-prorated allocation determined for that unit pursuant to subsection (d)(4) of this Section. If there are insufficient allowances to allocate whole allowances, such unallocated allowances shall be retained by the Agency and shall be available for allocation in a later control period.

B) If the NUSA for the control period for which the allowances are requested has a number of CAIR NO_x allowances less than the total un-prorated allocation to all new affected units requesting allocations, the Agency shall allocate the available allowances for new affected units on a pro-rata basis, using the un-prorated allocation determined for that unit pursuant to subsection (d)(4) of this Section. If there are insufficient allowances to allocate whole allowances, such unallocated allowances shall be retained by the Agency and shall be available for allocation in a later control period.

C) If the gross electrical output or useful thermal energy reported to the Agency in subsection (d) of this Section is later determined to be greater than the unit's actual gross electrical output or useful thermal energy for the applicable control period, the Agency shall reduce the unit's allocation from the NUSA for the current control period to account for the excess allowances allocated in the prior control period or periods.

e) The Agency shall review each NUSA allowance allocation request under subsection (b) of this Section. The Agency shall accept a NUSA allowance allocation request only if the request meets, or is adjusted by the Agency as necessary to meet, the requirements of this Section.

f) By February 8 after the applicable control period, the Agency shall notify each

CAIR designated representative that submitted a NUSA allowance request of the amount of CAIR NO_x allowances from the NUSA, if any, allocated for the control period to the new unit covered by the request.

g) The Agency shall allocate CAIR NO_x allowances to new units from the NUSA no later than February 15 after the applicable control period.

h) After a new affected unit has operated in one control period, it becomes an existing unit for the purposes of Section 225.440 of this Subpart only, and the Agency shall allocate CAIR NO_x allowances for that unit, for the control period commencing four years in the future pursuant to Section 225.440 of this Subpart. For example, if a unit commences commercial operation in 2009, in 2010, the Agency shall allocate to that unit allowances pursuant to Section 225.440 for the 2013 control period. The new affected unit shall continue to receive CAIR NO_x allowances from the NUSA according to this Section until the unit is eligible to use the CAIR NO_x allowances allocated to the unit pursuant to Section 225.440 of this Subpart.

h) If, after the completion of the procedures in subsection (c) of this Section for a control period, any unallocated CAIR NO_x allowances remain in the NUSA for the control period, the Agency shall, at a minimum, accrue those CAIR NO_x allowances for future control period allocations to new affected units. The Agency may from time to time elect to retire CAIR NO_x allowances in the NUSA that are in excess of 15,881 for the purposes of continued progress toward attainment and maintenance of National Ambient Air Quality Standards pursuant to the CAA.

Section 225.450 Monitoring, Recordkeeping and Reporting Requirements for Gross Electrical Output and Useful Thermal Energy

a) By January 1, 2007, or by the date of commencing commercial operation, whichever is later, the owner or operator of the affected unit shall install, calibrate, maintain, and operate a wattmeter; and shall measure gross electrical output in megawatt-hours on a continuous basis; and shall record the output of the wattmeter. If a generator is served by two or more units, the information to determine each unit's heat input for that control period shall also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data is used, the owner or operator shall comply with the applicable provisions 40 CFR 75, as incorporated by reference in Section 225.140 of this Part.

b) For a an affected unit that is a cogeneration unit by January 1, 2007, or by the date the affected unit commences to produce useful thermal energy, whichever is later, the owner or operator of an affected unit with cogeneration capabilities shall install, calibrate, maintain, and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit, and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. Owners and operators of an affected unit that produces useful thermal energy but uses an energy transfer medium other than steam, e.g., hot water, glycol, shall install, calibrate, maintain, and operate the necessary meters to measure and record the necessary data to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the affected unit ceases to produce useful thermal energy, the owner or operator may cease operation of the meters, provided that operation of such meters shall be resumed if the affected unit resumes production of useful thermal energy.

c) By September 30, 2006, the owner or operator of an affected unit shall report to the Agency the gross electrical output for control periods 2001, 2002, 2003, 2004 and 2005, if available, and, the unit's useful thermal energy data, if applicable. If gross electric output is not available, heat input shall be used for those control periods 2001, 2002, 2003, 2004, and 2005 for which gross electrical output data is not available. If a generator is served by two or more units, the documentation needed to determine each unit's share of the heat input of such units for that control period shall also be submitted. If heat input data is used, the owner or operator shall comply with the applicable provisions 40 CFR 75, as incorporated by reference in Section 225.140 of this Part.

d) Beginning with year 2007, the designated representative of the affected unit shall submit to the Agency quarterly, by no later than January 31, April 30, July 31, and October 31 of each year, information for the affected unit's gross electrical output, on a monthly basis, and, if applicable, the unit's useful thermal energy for each month.

e) The owner or operator of an affected unit shall maintain on-site the monitoring plan detailing the monitoring system, maintenance of the monitoring system, including quality assurance activities.

f) The owner or operator of an affected unit shall retain records for at least 5 years from the date the record is created or the data collected in subsections (a) and (b) of this Section, and the reports submitted to the Agency and USEPA in accordance with subsections (c) and (d) of this Section. The owner or operator of an affected unit shall retain the monitoring plan required in subsection (e) of this

Section for at least five years from the date that it is replaced by a new or revised monitoring plan.

Section 225.455 Clean Air Set-Aside (CASA)

a) A project sponsor may apply for allowances from the CASA for sponsoring an energy efficiency and conservation, renewable energy, or clean technology project as set forth in Section 225.460 of this Subpart by submitting the application required by Section 225.470 of this Subpart.

b) Notwithstanding subsection (a) of this Section, a project sponsor with an affected source that is out of compliance with this Subpart for a given control period may not apply for allowances from the CASA for that control period. If a source receives CAIR NO_x allowances from CASA and then is subsequently found to have been out of compliance with this Subpart for the applicable control period or periods, the project sponsor must restore the CAIR NO_x allowances that it received pursuant to its CASA request or an equivalent number of CAIR NO_x allowances to the CASA within six months of an Agency finding of noncompliance. These allowances shall be assigned to the fund from which they were distributed.

c) The Agency will not act as a mediator in situations where more than one project sponsor requests CAIR NO_x allowances for the same project. If more than one project sponsor submits an application for allowances for the same project for the same control period, the Agency shall reject all such applications.

d) CAIR NO_x allowances from CASA shall be allocated in accordance with the procedures in Section 225.475 of this Subpart.

e) The project sponsor may submit an application that aggregates two or more projects under a CASA project category that would individually result in less than one allowance, but that equal at a minimum one whole allowance when aggregated. The Agency shall not allocate allowances for projects totaling less than one whole allowance after rounding.

Section 225.460 Energy Efficiency and Conservation, Renewable Energy, and Clean Technology Projects

a) Energy efficiency and conservation project means any of the following projects implemented in Illinois:

1) Demand side management projects that reduce overall power demand by using less energy, include:

   A) Smart building management software that more efficiently regulates power flows.

   B) The use of or replacement to high efficiency motors, pumps, compressors, or steam systems.

2) Energy efficient new building construction projects include:

   A) ENERGY STAR qualified new home projects.

   B) Measures to reduce conserve energy consumption beyond the requirements of the Illinois Energy Conservation Code for Commercial Buildings (20 ILCS 687/6-3).

   C) New residential construction projects that qualify for Energy Efficient Tax Incentives under the Energy Policy Act of 2005, 42 U.S.C. §15801 (2005).

3) Supply-side energy efficiency projects include projects implemented to improve the efficiency in electricity generation by coal-fired power plants, and the efficiency of electrical transmission and distribution systems.

4) Highly efficient power generation projects, such as, but not limited to, combined cycle projects, combined heat and power, and microturbines. To be considered a highly efficient power generation project under this subsection, a project must meet, the applicable thresholds listed below:

   A) For combined heat and power projects generating both electricity and useful thermal energy for space, water, or industrial process heat, a rated-energy efficiency of at least 60 percent.

   B) For combined cycle projects rated at greater than 0.50 MW, a rated-energy efficiency of at least 50 percent.

   C) For microturbine projects rated at or below 0.50 MW and all other projects, rated-energy efficiency of at least 40 percent.

b) Renewable energy project means any of the following projects implemented in Illinois:

1) Zero-emission electric generating projects, including wind, solar (thermal or photovoltaic), and hydropower projects. Eligible hydropower plants are restricted to new generators, that are not replacements of existing generators, that commence operation on or after January 1, 2006, and do not involve the significant expansion of an existing dam or the construction of a new dam.

2) Renewable energy units are those units that generate electricity using more than 50 percent of the heat input, on an annual basis, from dedicated crops grown for energy production or the capture systems for methane gas from landfills, water treatment plants or sewage treatment plants, and organic waste biomass, and other similar sources of non-fossil fuel energy. Renewable energy projects do not include energy from incineration by burning or heating of waste wood, tires, garbage, general household, institutional lunchroom or office waste, landscape waste, or construction or demolition debris.

c) Clean technology project for reducing emissions from producing electricity and useful thermal energy means any of the following projects implemented in Illinois:

1) Air pollution control equipment upgrades at existing coal-fired electric generating units, as follows: installation of flue gas desulfurization (FGD) for control of SO_2 emissions; installation of a baghouse for control of particulate matter emissions; and installation of selective catalytic reduction (SCR), selective non-catalytic reduction (SNCR), or other add-on control devices for control of NO_x emissions. Air pollution control upgrade projects do not include the addition of low NO_x burners, overfired air techniques or gas reburning techniques for control of NO_x emissions; projects involving flue gas conditioning techniques or upgrades, or replacement of electrostatic precipitators; or addition of activated carbon injection or other sorbent injection system for control of mercury. For this purpose, a unit shall be considered "existing" after it has been in commercial operation for at least eight years.

2) Clean coal technologies projects include:

A) Integrated gasification combined cycle (IGCC) plants.

B) Fluidized bed coal combustion.

d) Energy efficiency and conservation, renewable energy, or clean technology projects listed in subsections (a) through (c) of this Section shall not include nuclear power projects; projects required to meet emission standards or technology requirements under State or federal law or regulation (except for the installation of a baghouse); or projects used to meet the requirements of a court order or consent decree; or a Supplemental Environmental Project (SEP). CASA allowances shall not be allocated to such projects.

e) Applications for projects that that are not specifically listed in subsections (a) through (c) of this Section, and that are not specifically excluded by subsection (d) of this Section, may be submitted to the Agency. Such application shall designate which category or categories from those listed in subsections (a)(1) through (c)(2)(B) of this Section best fits the proposed project and the applicable formula under Section 225.465(b) of this Section to calculate the number of allowances that it is requesting. The Agency shall determine whether the application is approvable based on a sufficient demonstration by the project sponsor that the project is a new type of energy efficiency, renewable energy, or clean technology project, similar in its effects as the projects specifically listed in subsection (a) through (c) of this Section.

f) Early adopter projects include projects that meet the criteria for any energy efficiency and conservation, renewable energy, or clean technology projects listed in subsections (a) , (b), (c), and (e) of this Section and commence construction between July 1, 2006, and December 31, 2012.

Section 225.465 CASA Allowances

a) The CAIR NO_x allowances for the CASA for each control period shall be assigned to the following categories of projects:

		Phase I (2009-2014)	Phase II (2015 and thereafter)
1)	Energy Efficiency and Conservation/ Renewable Energy	9149	7625
2)	Air Pollution Control Equipment	3811	3175

	Upgrades		
3)	Clean Coal Technology	4573	3810
4)	Early Adopters	1525	1271

b) The following formulas shall be used to determine the number of CASA allowances that may be allocated to a project per control period:

1) For an energy efficiency and conservation project pursuant to Sections 225.460(a)(1) through (a)(3) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity that was not consumed during a control period and the following formula:

$A = (MWh_c) \times (1.5 \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A = The number of allowances for a particular project.
MWh_c = The number of megawatt hours of electricity conserved during a control period by a project.

2) For a zero emission electric generating projects pursuant to Section 225.460(b)(1) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity generated during a control period and the following formula:

$A = (MWh_g) \times (2.0 \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A = The number of allowances for a particular project
MWh_g = The number of megawatt hours of electricity generated during a control period by a project.

3) For a renewable energy emission unit pursuant to Section 225.460(b)(2) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity generated during a control period and the following formula:

$A = (MWh_g) \times (0.5 \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A = The number of allowances for a particular project.
MWh_g = The number of MW hours of electricity generated during a control period by a project.

4) For an air pollution control equipment upgrade project pursuant to Section 225.460(c)(1) of this Subpart, the number of allowances shall be calculated as follows:

A) For NO_x or SO_2 control projects, by determining the difference in emitted NO_x or SO_2 per control period using the emission rate before and after replacement or improvement, and the following formula:

$A = (MWh_g) \times K \times (ER_B \text{ lb/MWh} - ER_A \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A = The number of allowances for a particular project.
MWh_g = The number of megawatt hours of electricity generated during a control period by a project.
K = The pollutant factor: for NO_x, K= 0.1; and for SO_2, K = 0.05.
ER_B = Average NO_x or SO_2 emission rate based on CEMS data from the most recent two control periods prior to the replacement or improvement of the control equipment in lb/MWh.
ER_A = Annual NO_x or SO_2 average emission rate for the applicable control period data based on CEMS data in lb/MWh.

B) For a baghouse project:

$A = (MWh_g) \times (0.2 \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A	=	The number of allowances for a particular project.
MWh_g	=	The number of megawatt hours of electricity generated during a control period or the portion of a control period that the units were controlled by the baghouse.

5) For highly efficient power generation and IGCC projects pursuant to Sections 225.460(a)(4) and (c)(2) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity the project generates during a control period and the following formula:

$$A = (MWh_g) \times (1.0 \text{ lb/MWh} - \text{ER lb/MWh}) / 2000 \text{ lb}$$

Where:

A	=	The number of allowances for a particular project.
MWh_g	=	The number of megawatt hours of electricity generated during a control period by a project.
ER	=	Annual average NO_x emission rate based on CEMS data in lb/MWh.

6) For a CASA project that commenced construction before December 31, 2012, in addition to the allowances allocated under subsections (b)(1) through (b)(5) of this Section, a project sponsor may also request additional allowances under the early adopter project category pursuant to Section 225.460(e) of this Section based on the following formula:

$$A = 1.0 + 0.10 \times \Sigma A_i$$

Where:

A	=	The number of allowances for a particular project as determined in subsections (b)(1) through (b)(5) of this Section.
A_i	=	The number of allowances as determined in subsection (b)(1), (b)(2), (b)(3), (b)(4) or (b)(5) of this Section for a given project.

Section 225.470 CASA Applications

a) A project sponsor may request allowances if the project commenced construction on or after the dates listed below. The project sponsor may request and be allocated allowances from more than one CASA category for a project, if applicable.

1) Demand side management, energy efficient new construction, and supply side energy efficiency and conservation projects that commenced construction on or after January 1, 2003;

2) Fluidized bed coal combustion projects, highly efficient power generation operations projects, or renewable energy emission units, which commenced construction on or after January 1, 2001; and

3) All other projects on or after July 1, 2006.

b) Beginning with the 2009 control period and each control period thereafter, a project sponsor may request allowances from the CASA. The application must be submitted to the Agency by May 1 of the control period for which the allowances are being requested.

c) The allocation shall be based on the electricity conserved or generated in the control period preceding the calendar year in which the application is submitted. To apply for a CAIR NO_x allocation from the CASA, project sponsors must provide the Agency with the following information:

1) Identification of the project sponsor, including name, address, type of organization, and name(s) of the principals or corporate officials.

2) The number of the CAIR NO_x general or compliance account for the project and the name of the associated CAIR account representative.

3) A description of the project or projects, location, the role of the project sponsor in the projects, and a general explanation of how the amount of energy conserved or generated was measured, verified, and calculated, and the number of allowances requested and the with supporting calculations. The number of allowances requested shall be calculated using the applicable formula from Section 225.470(b) of this Section.

4) Detailed information to support the request for allowances, including the following types of documentation for the measurement and verification of the NO_x emissions reductions, electricity generated, or electricity conserved using established measurement verification procedures, as applicable. The measurement and verification required shall depend on the type of project proposed.

A) As applicable, documentation of the project's base and control period conditions and resultant base and control period energy data, using the procedures and methods included in *M&V Guidelines: Measurement and Verification for Federal Energy Projects,* incorporated by reference in Section 225.140 of this Part, or other method approved by the Agency. Examples include:

i) Energy consumption and demand profiles;

ii) Occupancy type;

iii) Density and periods;

iv) Space conditions or plant throughput for each operating period and season. (For example, in a building this would include the light level and color, space temperature, humidity and ventilation);

v) Equipment inventory, nameplate data, location, condition; and

vi) Equipment operating practices (schedules and set points, actual temperatures/pressures).

B) Emissions data, including, if applicable, CEMS data;

C) Information for rated–energy efficiency including supporting documentation and calculations; and

D) Electricity, in MWh generated or conserved for the applicable control period.

5) Notwithstanding the requirements of subsections (c)(4) of this Section, applications for fewer than five allowances may propose other reliable and applicable methods of quantification acceptable to the Agency.

6) Any additional information requested by the Agency to determine the correctness of the requested number of allowances, including site information, project specifications, supporting calculations, operating procedures, and maintenance procedures.

7) The following certification by the responsible official for the project sponsor and the applicable CAIR account representative for the project:

"I am authorized to make this submission on behalf of the project sponsor and the holder of the CAIR NO_x general account or compliance account for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with the statements and information submitted in this application and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information."

d) A project sponsor may request allowances from the CASA for each project a total number of control periods not to exceed the number of control periods listed below. After a project has been allocated allowances from CASA, subsequent requests for the project from the project sponsor shall include the information required by subsections (c)(1), (c)(2), (c)(3) and (c)(7) of this Section, a description of any changes, or further improvements made to the project, and information specified in subsections (c)(5) and (c)(6) as specifically requested by the Agency.

1) For energy efficiency and conservation projects (except for efficient operation and renewable energy projects), for a total of eight control periods.

2) For early adopter projects, for a total of ten control periods.

3) For air pollution control equipment upgrades for a total of 15 control periods.

3) For renewable energy projects, clean coal technology, and highly efficient power generation projects, for each year that the project is in operation.

e) A project sponsor must keep copies of all CASA applications and the documentation used to support the application for at least five years.

Section 225.475 Agency Action on CASA Applications

a) By October 1, 2009, and each October 1 thereafter, the Agency shall determine the total number of allowances that are approvable for allocation to project sponsors based upon the applications submitted pursuant to Section 225.470 of this Subpart.

1) The Agency shall determine the number of CAIR NO_x allowances that are approvable based on the formulas and the criteria for such projects. The Agency shall notify a project sponsor within 90 days after receipt of an application if the project is not approvable, the number of allowances requested is not approvable, or additional information is needed by the Agency to complete its review of the application.

2) If the total number of CAIR NO_x allowances requested for approved projects is less than or equal to the number of CAIR NO_x allowances in the CASA project category, the number of allowances that are approved shall be allocated to each CAIR NO_x compliance or general account.

3) If more CAIR NO_x allowances are requested than the number of CAIR NO_x allowances in a given CASA project category, allowances shall be allocated on a pro-rata basis based on the number of allowances available, subject to further adjustment as provided for by subsection (b) of this Section. CAIR NO_x allowances shall be allocated, transferred, or used as whole allowances. The number of whole allowances shall be determined by rounding down for decimals less than 0.5 and rounding up for decimals of 0.5 or greater.

b) If there are, after the completion of the procedures in subsection (a) of this Section for a control period, any CAIR NO_x allowances not allocated to a CASA project for the control period:

1) The remaining allowances in each CASA project category will accrue up to twice the number of allowances that are assigned to the project category each control period as set forth in Section 225.465 of this Subpart.

2) For control period 2011 and thereafter, allowances in a project category that are in excess of twice the number assign for the control period as set forth in Section 225.465 of this Subpart shall be redistributed to project categories that have fewer than twice the number of allowances assigned to that project category for the control period.

3) For control period 2011 and thereafter, the Agency shall then reallocate allowances to projects that received fewer allowances than requested and approved on a pro-rata basis, based on the total number of approved allowances for the projects.

4) For control period 2011 and thereafter, if after the redistribution of allowances pursuant to subsection (b)(2) any allowances remain, these allowances shall be reassigned to project categories that have fewer than twice the number of allowances annually assigned to that project category as set forth in Section 225.465 of this Subpart, after the allocation in subsection (b)(3) of this Section.

5) The Agency shall repeat the process of allocating allowances to CASA projects that received fewer allowances than requested and approved, and reassigning allowances to project categories as set forth in subsections (b)(2), (b)(3), and (b)(4) of this Section, until no allowances remain to be reassigned between project categories and the approved allowance requests have been filled. If allowances still remain unallocated, the Agency may elect to retire any CAIR NO_x allowances that remain after all approved requests for allowances have been met and each project category has accrued twice the number of allowances assigned for that project category to continue progress toward attainment or maintenance of the National Ambient Air Quality Standards pursuant to the CAA.

Section 225.480 Compliance Supplement Pool

In addition to the CAIR NO_x allowances allocated under Section 225.435 of this Subpart, the USEPA has provided an additional 11,299 CAIR NO_x allowances from the federal compliance supplement pool to Illinois for the control period in 2009. On January 1, 2009, the Agency shall retire all 11,299 NO_x allowances for public health and air quality improvements.

SUBPART E: CAIR NO_x OZONE SEASON TRADING PROGRAM

Section 225.500 Purpose

The purpose of this Subpart is to control the seasonal emissions of nitrogen oxides (NO_x) from electric generating units by determining allocations and implementing the CAIR NO_x Ozone Season Trading Program.

Section 225.505 Applicability

a) A fossil fuel-fired stationary boiler, combustion turbine or combined cycle system is an electrical generating unit if it serves a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale and is not included in Appendix D of 35 Ill. Adm. Code Part 217. An electric generating unit is subject to the CAIR NO_x Ozone Season Trading Program contained in this Subpart and is a CAIR NO_x Ozone Season unit or affected unit for the purposes of this Subpart.

b) Notwithstanding subsection (a) of this Section, an EGU shall not be an affected unit and is not subject to the CAIR NO_x Ozone Season Trading Program contained in this Subpart if it meets the requirements of either subsection (b)(1)(A) or (b)(2)(A) of this Section, as follows:

1) A unit that:

A) Meets the definition of a cogeneration unit in Section 225.130 of this Part; and

i) Qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit; and

ii) Does not serve at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 MWe, and which supplies in any calendar year more than one-third of the unit's potential electrical output capacity or 219,000 MWh, whichever is greater, to a utility power distribution system for sale.

B) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to subsection (a) of this Section starting on the

January 1 after which the unit first no longer qualifies as a cogeneration unit.

2) A unit that:

A) Qualifies as a solid waste incineration unit as defined by Section 129(g) of the CAA [42 U.S.C. 7429(g)]; and

i) Commences operation on or after January 1, 1985; and

ii) Has an average annual fuel consumption of non-fossil fuel for the first three calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any three consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

B) If a unit qualifies as a solid waste incineration unit and meets the requirements of subsection (b)(2)(A) of this Section for at least three consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become an affected unit starting on the January 1 after which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

Section 225.510 Compliance Requirements

a) The owner or operator of an affected unit shall comply with the requirements of the CAIR NO_x Ozone Season Trading Program for Illinois as set forth in this Subpart and 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); as incorporated by reference in Section 225.140 of this Part.

b) Permit requirements:

1) The owner or operator of each source with one or more affected units at the source must apply for a permit issued by the Agency with federally

enforceable conditions covering the CAIR NO_x Ozone Season Trading Program ("CAIR NO_x Ozone Season permit") that complies with the requirements of Section 225.520 of this Subpart (Permit Requirements).

2) The owner or operator of each affected source and each affected unit at the source must operate the affected unit in compliance with such CAIR NO_x Ozone Season permit.

c) Monitoring requirements:

1) The owner or operator of each affected source and each affected unit at the source must comply with the monitoring requirements of 40 CFR 96, subpart HHHH; 40 CFR 75; and Section 225.550 of this Subpart. The CAIR designated representative of each affected source and each affected unit at the source must comply with those sections of the monitoring requirements of 40 CFR 6, subpart HHHH, applicable to a CAIR designated representative.

2) The compliance of each affected unit with the CAIR NO_x Ozone Season emissions limitation under subsection (d) of this Section shall be determined by the emissions measurements recorded and reported in accordance with 40 CFR 96, subpart HHHH.

d) Emission requirements:

1) By November 30, 2009, and by November 30, of each subsequent year, the allowance transfer deadline, the CAIR designated representative of each affected source and each affected unit at the source shall hold allowances available for compliance deductions under 40 CFR § 96.354(a) in the CAIR NO_x Ozone Season source's compliance account. The number of allowances held shall not be less than the tons of NO_x emissions for the control period from all affected units at the affected source, rounded to the nearest whole ton, as determined in accordance with 40 CFR 96, subpart HHHH, plus any number of allowances necessary to account for actual utilization including, but not limited to, testing, start-up, malfunction, and shut down.

2) Each ton of NO_x emitted in excess of the number of CAIR NO_x Ozone Season allowances held by the owner or operator for each affected unit in its CAIR NO_x Ozone Season compliance account for each control period shall constitute a separate violation of this Subpart and the Act.

3) Each affected unit shall be subject to the monitoring and compliance requirements of subsections (c)(1) and (d)(1) of this Section starting on the later of January 1, 2009, or the deadline for meeting the unit's monitoring certification requirements under 40 CFR § 96.370(b)(1), (b)(2) or (b)(3).

4) CAIR NO_x Ozone Season allowances shall be held in, deducted from, or transferred among allowance accounts in accordance with this Subpart and 40 CFR 96, subparts FFFF and GGGG.

5) In order to comply with the requirements of subsection (d)(1) of this Section, a CAIR NO_x Ozone Season allowance may not be utilized for a control period in a year prior to the year for which the allowance is allocated.

6) A CAIR NO_x Ozone Season allowance allocated by the Agency or USEPA under the CAIR NO_x Ozone Season Trading Program is a limited authorization to emit one ton of NO_x in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR NO_x Ozone Season permit application, the CAIR NO_x Ozone Season permit, or a retired unit exemption under 40 CFR § 96.305, and no provision of law, shall be construed to limit the authority of the United States or the State to terminate or limit this authorization.

7) A CAIR NO_x Ozone Season allowance allocated by the Agency or USEPA under the CAIR NO_x Ozone Season Trading Program does not constitute a property right.

8) Upon recordation by USEPA under 40 CFR 96, subpart FFFF or subpart GGGG, every allocation, transfer, or deduction of an allowance to or from a CAIR NO_x Ozone Season source compliance account is deemed to amend automatically, and become a part of, any CAIR NO_x Ozone Season permit of the affected source. This automatic amendment of the CAIR NO_x Ozone Season permit shall be deemed an operation of law and will not require any further review.

e) Recordkeeping and reporting requirements:

1) Unless otherwise provided, the owner or operator of the affected source and each affected unit at the source shall keep on site at the source each of

the documents listed in subsections (e)(1)(A) through (e)(1)(E) of this Section for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the Agency or USEPA.

A) The certificate of representation for the CAIR designated representative for the source and each affected unit at the source, all documents that demonstrate the truth of the statements in the certificate of representation, provided that the certificate and documents must be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation under 40 CFR § 96.313, changing the CAIR designated representative.

B) All emissions monitoring information, in accordance with 40 CFR 96, subpart HHHH.

C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Ozone Season Trading Program or documents necessary to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program or with the requirements of this Subpart.

D) Copies of all documents used to complete a CAIR NO_x Ozone Season permit application and any other submission under the CAIR NO_x Ozone Season Trading Program.

E) Copies of all records and logs for gross electrical output and useful thermal energy required by Section 225.550 of this Subpart.

2) The CAIR designated representative of an affected source and each affected unit at the source must submit to the Agency and USEPA the reports and compliance certifications required under the CAIR NO_x Ozone Season Trading Program, including those under 40 CFR 96, subpart HHHH and Section 225.550 of this Subpart.

f) Liability:

1) No revision of a permit for an affected unit shall excuse any violation of the requirements of this Subpart or the requirements of the CAIR NO_x

Ozone Season Trading Program.

2) Each affected source and each affected unit shall meet the requirements of the CAIR NO_x Ozone Season Trading Program.

3) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to an affected source (including any provision applicable to the CAIR designated representative of an affected source) shall also apply to the owner and operator of such affected source and to the owner and operator of each affected unit at the source.

4) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to an affected unit (including any provision applicable to the CAIR designated representative of an affected unit) shall also apply to the owner and operator of such affected unit. Except with regard to the requirements applicable to affected units with a common stack under 40 CFR 96, subpart HHHH, the owner, the operator, and the CAIR designated representative or alternate designated representative of an affected unit shall not be liable for any violation by any other affected unit of which they are not an owner or operator or the CAIR designated representative.

5) The CAIR designated representative of an affected unit that has excess emissions in any control period shall surrender the allowances as required for deduction under 40 CFR § 96.354(d)(1).

6) The owner or operator of an affected unit that has excess NO_x emissions in any control period shall pay any fine, penalty, or assessment or comply with any other remedy imposed under the Act and 40 CFR § 96.354(d)(2).

g) Effect on other authorities. No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR NO_x Ozone Season permit application, a CAIR NO_x Ozone Season permit, or a retired unit exemption under 40 CFR § 96.305 shall be construed as exempting or excluding the owner and operator and, to the extent applicable, the CAIR designated representative of an affected source or an affected unit, from compliance with any other regulation promulgated under the CAA, the Act, any State regulation or permit, or a federally enforceable permit.

Section 225.515 Appeal Procedures

The appeal procedures for decisions of USEPA under the CAIR NO_x Ozone Season Trading Program are set forth in 40 CFR 78, as incorporated by reference in Section 225.140 of this Part.

Section 225.520 Permit Requirements

a) Permit requirements:

1) The owner or operator of each source with an affected unit is required to submit a complete permit application addressing all applicable CAIR NO_x Ozone Season Trading Program requirements for a permit meeting the requirements of this Section, applicable to each affected unit at the source. Each CAIR NO_x Ozone Season permit shall contain elements required for a complete CAIR NO_x Ozone Season permit application under subsection (b)(2) of this Section.

2) Each CAIR NO_x Ozone Season permit shall contain federally enforceable conditions addressing all applicable CAIR NO_x Ozone Season Trading Program requirements and shall be a complete and segregable portion of the source's entire permit under subsection (a)(1) of this Section.

3) No CAIR NO_x Ozone Season permit shall be issued, and no CAIR NO_x Ozone Season compliance account shall be established for an affected source, until the Agency and USEPA have received a complete certificate of representation for a CAIR designated representative under 40 CFR 96, subpart BBBB, for the affected source and the affected unit at the source.

4) For all affected units that commenced operation before July 1, 2007, the owner or operator of such unit must submit a CAIR NO_x Ozone Season permit application meeting the requirements of this Section on or before July 1, 2007.

5) For all affected units and that commence operation on or after July 1, 2008, the owner or operator of such units must submit applications for construction and operating permits pursuant to the requirements of Sections 39 and 39.5 of the Act, as applicable, and 35 Ill. Adm. Code 201, and such applications must specify that they are applying for CAIR NO_x Ozone Season permits, and must address the CAIR NO_x Ozone Season permit application requirements of this Section.

b) Permit applications:

1) Duty to apply. The owner or operator of any source with one or more affected units shall submit to the Agency a CAIR NO_x Ozone Season

permit application for the source covering each affected unit under subsection (b)(2) of this Section by the applicable deadline in subsection (a)(4) or (a)(5) of this Section. The owner or operator of any source with one or more affected units shall reapply for a CAIR NO_x Ozone Season permit for the source as required by this Subpart, 35 Ill. Adm. Code 201, and, as applicable, Sections 39 and 39.5 of the Act.

2) Information requirements for CAIR NO_x Ozone Season permit applications. A complete CAIR NO_x Ozone Season permit application shall include the following elements concerning the source for which the application is submitted:

A) Identification of the source, including plant name. The ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration shall also be included, if applicable;

B) Identification of each affected unit at the source; and

C) The compliance requirements applicable to each affected unit as set forth in Section 225.510 of this Subpart.

3) An application for a CAIR NO_x Ozone Season permit shall be treated as a modification of the affected source's existing federally enforceable permit, if such a permit has been issued for that source, and shall be subject to the same procedural requirements. When the Agency issues a CAIR NO_x Ozone Season permit pursuant to the requirements of this Section, it shall be incorporated into and become part of that source's existing federally enforceable permit.

Section 225.525 Ozone Season Trading Budget

The CAIR NO_x Ozone Season Trading budget available for allowance allocations for each control period shall be determined as follows:

a) The total base CAIR NO_x Ozone Season Trading budget is 30,701 tons per control period for the years 2009 through 2014, subject to a reduction for two set-asides, the NUSA and the CASA. Five percent of the budget shall be allocated to the NUSA and 25 percent shall be allocated to the CASA, resulting in a CAIR NO_x Ozone Season Trading budget available for allocation of 21,491 tons per control period pursuant to Section 225.540 of this Subpart. The requirements of

the NUSA are set forth in Section 225.545 of this Subpart, and the requirements of the CASA are set forth in Sections 225.555 through 225.570 of this Subpart.

b) The total base CAIR NO_x Ozone Season Trading budget is 28,981 tons per control period for the year 2015 and thereafter, subject to a reduction for two set-asides, the NUSA and the CASA. Five percent of the budget shall be allocated to the NUSA and 25 percent shall be allocated to the CASA, resulting, in a CAIR NO_x Ozone Season Trading budget available for allocation of 20,287 tons per control period pursuant to Section 225.540 of this Subpart.

c) If USEPA adjusts the total base CAIR NO_x Ozone Season Trading budget for any reason, the Agency shall adjust the base CAIR NO_x Ozone Season Trading budget CAIR NO_x Ozone Season Trading budget available for allocation, accordingly.

Section 225.530 Timing for Ozone Season Allocations

a) By October 31, 2006, the Agency shall submit to USEPA the CAIR NO_x Ozone Season allowance allocations, in accordance with Sections 225.535 and 225.540 of this Subpart for the 2009, 2010, and 2011 control periods.

b) By July 31, 2009, and July 31 of each year thereafter, the Agency shall submit to USEPA the CAIR NO_x Ozone Season allowance allocations in accordance with Sections 225.535 and 225.540 of this Subpart, for the control period three years after the year of the applicable deadline for submission under this Section. For example, on July 31, 2009, the Agency shall submit to USEPA the allocation for the 2012 control period.

c) The Agency shall allocate allowances from the NUSA to affected units that commence commercial operation on or after May 1, 2006. The Agency shall report these allocations to USEPA by November 15 after the applicable control period. For example, on November 15, 2009, the Agency shall submit to USEPA the allocations for the 2009 control period.

d) The Agency shall allocate allowances from the CASA to energy efficiency, renewable energy, and clean technology projects pursuant to the criteria in Sections 225.555 through 225.570 of this Subpart. The Agency shall report these allocations to USEPA by December 1 of each year. For example, on December 1, 2010, the Agency shall submit to USEPA the allocations from the CASA for the 2010 control period, based on reductions made in the 2009 control period.

Section 225.535 Methodology for Calculating Ozone Season Allocations

The Agency shall calculate converted gross electrical output (CGO), in MWh, for each affected unit that has operated during at least one control period prior to the calendar year in which the Agency reports the allocations to USEPA as follows:

a) For control periods 2009, 2010, and 2011, the unit's converted gross electrical output (CGO) shall be:

1) If the unit has four or five control periods of data, then the gross electrical output (GO) shall be the average of the unit's three highest gross electrical outputs from the 2001, 2002, 2003, 2004, or 2005 control periods. If the unit has three or fewer control periods of gross electrical outputs, the gross electrical output shall be the average of those control periods. If the unit does not have gross electrical output for the 2004 and 2005 control periods, the gross electrical output shall be the gross electrical output from the 2005 control period. If the unit does not have gross electrical output, then heat input shall be used pursuant to subsection (a)(2) of this Section. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the control period. The unit's converted gross electrical output shall be calculated as follows:

A) If the unit is coal-fired:
CGO (in MWh) = GO × MWh × 1.0;

B) If the unit is oil-fired:
CGO (in MWh) = GO × MWh × 0.6;

C) If the unit is neither coal-fired nor oil-fired:
CGO (in MWh) = GO × MWh × 0.4.

2) If gross electrical output is not provided to the Agency, heat input (HI) shall be used. If the unit has four or five control periods of data, the average of the unit's three highest control period heat inputs from 2001, 2002, 2003, 2004 or 2005 shall be used. If the unit has heat input from the 2003, 2004, or 2005 control periods, the heat input shall be the average of those control periods. If the unit does not have heat input from the 2004 and 2005 control periods, the heat input from the 2005 control period shall be used. The unit's converted gross electrical output shall be calculated as follows:

A) If the unit is coal-fired:
CGO (in MWh) = HI (in mmBtu) × 0.0967;

B) If the unit is oil-fired:
CGO (in MWh) = HI (in mmBtu) × 0.0580; or

C) If the unit is neither coal-fired nor oil-fired:
CGO (in MWh) = HI (in mmBtu) × 0.0387.

b) For control period 2012 and thereafter, the unit's gross electrical output shall be the average of the unit's two most recent control period's gross electrical output, if available, otherwise the unit's most recent control period gross electrical output. If a generator is served by two or more units, the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the control period. The unit's converted gross electrical output shall be calculated as follows:

1) If the unit is coal-fired:
CGO (in MWh) = GO × 1.0;

2) If the unit is oil-fired:
CGO (in MWh) = GO × 0.6; or

3) If the unit is neither coal-fired nor oil-fired:
CGO (in MWh) = GO × 0.4.

c) For a unit that is a combustion turbine or boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the Agency shall add the converted gross electrical output calculated for electricity pursuant to subsections (a) or (b) of this Section to the converted useful thermal energy (CUTE) to determine the total converted gross electrical output for the unit (TCGO). The Agency shall determine the converted useful thermal energy by using the average of the unit's control period useful thermal energy for the prior two control periods, if available, otherwise the unit's control period useful thermal output for the prior year shall be used. The converted useful thermal energy shall be determined using the following equations:

1) If the unit is coal-fired:

CUTE (in MWh) = UTE (in mmBtu) × 0.2930;

2) If the unit is oil-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.1758; or

3) If the unit is neither coal-fired nor oil-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.1172.

d) The affected unit's gross electrical output and converted useful thermal energy in subsections (a)(1), (b), and (c) of this Section for each control period shall be based on the best available data reported or available to the Agency for the affected unit pursuant to the provisions of Section 225.550 of this Subpart.

e) The affected unit's heat input in subsection (a)(2) of this Section for each control period shall be determined in accordance with 40 CFR 75, as incorporated by reference in Section 225.140 of this Part.

Section 225.540 Ozone Season Allocations

a) For the 2009 control period, and each control period thereafter, the Agency shall allocate CAIR NO_x Ozone Season allowances to all affected units in Illinois for which the Agency has calculated the total converted gross electrical output, including converted useful thermal energy, if any, as determined in Section 225.535 of this Subpart, a total amount of CAIR NO_x Ozone Season allowances equal to tons of NO_x emissions in the CAIR NO_x Ozone Season Trading budget available for allocation determined in Section 225.525 of this Subpart and allocated pursuant to Section 225.540 of this Subpart.

b) The Agency shall allocate CAIR NO_x Ozone Season allowances to each affected unit on a pro-rata basis using the unit's total converted gross electrical output calculated pursuant to Section 225.535 of this Subpart. If there are insufficient allowances to allocate whole allowances, such unallocated allowances shall be retained by the Agency and shall be available for allocation in later control periods.

Section 225.545 New Unit Set-Aside (NUSA)

For the 2009 control period and each control period thereafter, the Agency shall allocate CAIR NO_x Ozone Season allowances from the NUSA to affected units that commenced commercial operation on or after May 1, 2006, and do not yet have an allocation for the particular control period pursuant to Section 225.540 of this Subpart, in accordance with the following procedures:

a) Beginning with the 2009 control period and each control period thereafter, the Agency shall establish a separate NUSA for each control period. Each new unit set-aside shall be allocated CAIR NO_x Ozone Season allowances equal to 5 percent of the amount of tons of NO_x emissions in the base CAIR NO_x Ozone Season Trading budget in Section 225.525 of this Subpart.

b) The CAIR designated representative of such an affected unit may submit to the Agency a request, in a format specified by the Agency, to be allocated CAIR NO_x Ozone Season allowances from the NUSA starting with the first control period in which the new unit commences commercial operation and until the first control period for which the unit may use CAIR NO_x Ozone Season allowances allocated to the unit under Section 225.540 of this Subpart. The NUSA allowance allocation request may only be submitted after a new unit has operated during one control period, and no later than October 15 after the control period for which allowances from the NUSA are being requested.

c) In a NUSA allowance allocation request under subsection (b) of this Section, the CAIR designated representative must include in its request must provide in its request the information for the gross electrical output and useful thermal energy, if any, for the new affected unit for that control period.

d) The Agency shall allocate allowances from the NUSA to a new affected unit using the following procedures:

1) For each new affected unit that has operated during at least one control period, the unit's gross electrical output for the most recent control period, shall be used to calculate the unit's gross electrical output. If a generator is served by two or more units, the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the control period. The new unit's converted gross electrical output shall be calculated as follows:

A) If the unit is coal-fired:
CGO (in MWh) = GO × 1.0;

B) If the unit is oil-fired:
CGO (in MWh) = GO × 0.6; or

C) If the unit is neither coal-fired nor oil-fired:
CGO (in MWh) = GO × 0.4.

2) If the unit is a combustion turbine or boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the Agency shall add the converted gross electrical output calculated for electricity pursuant to subsection (c)(1) of this Section to the converted useful thermal energy to determine the total converted gross electrical output for the unit. The Agency shall determine the converted useful thermal energy using the unit's useful thermal energy for the most recent control period. The converted useful thermal energy shall be determined using the following equations:

A) If the unit is coal-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.2930;

B) If the unit is oil-fired: CUTE (in MWh) =
UTE (in mmBtu) × 0.1758; or

C) If the unit is neither coal-fired nor oil-fired:
CUTE (in MWh) = UTE (in mmBtu) × 0.1172.

3) The gross electrical output and useful thermal energy in subsections (d)(1) and (d)(2) of this Section for the control period in each year shall be based on the best available data reported or available to the Agency for the affected unit pursuant to the provisions of Section 225.550 of this Subpart.

4) The Agency shall determine a unit's un-prorated allocation (UA_y) using the unit's converted gross electrical output plus the unit's converted useful thermal energy, if any, calculated in subsections (d)(1) and (d)(2) of this Section, converted to approximate NO_x tons (the unit's un-prorated allocation), as follows:

$$UA_y = \frac{TCGO_y \times (1.0 lbs/MWh)}{2000 lbs/ton}$$

Where:

UA_y = un-prorated allocation to a new affected unit.

$TCGO_y$ = total converted gross electrical output for a new affected unit.

5) The Agency shall allocate CAIR NO_x Ozone Season allowances from the NUSA to new affected units as follows:

A) If the NUSA for the control period for which CAIR NO_x Ozone Season allowances are requested has a number of allowances greater than or equal to the total un-prorated allocations for all new unit's requesting allowances, the Agency shall allocate the number of allowances using the un-prorated allocation determined for that unit in subsection (d)(4) of this Section. If there are insufficient allowances to allocate whole allowances, such unallocated allowances shall be retained by the Agency and shall be available for allocation in a later control period.

B) If the NUSA for the control period for which the allowances are requested has a number of CAIR NO_x Ozone Season allowances less than the total un-prorated allocation to all new affected units requesting allocations, the Agency shall allocate the available allowances for new affected units on a pro-rata basis, using the un-prorated allocation determined for that unit pursuant to subsection (d)(4) of this Section. If there are insufficient allowances to allocate whole allowances, such unallocated allowances shall be retained by the Agency and shall be available for allocation in a later control period.

C) If the gross electrical output or useful thermal energy reported to the Agency pursuant to subsection (d) of this Section is later determined to be greater than the unit's actual gross electrical output or useful thermal energy for the applicable control period, the Agency shall reduce the unit's allocation from the NUSA for the current control period to account for the excess allowances allocated in the prior control period or periods.

e) The Agency shall review each NUSA allowance allocation request under subsection (b) of this Section. The Agency shall accept a NUSA allowance allocation request only if the request meets, or is adjusted by the Agency as necessary to meet, the requirements of this Section.

f) By November 8 after the applicable control period, the Agency shall notify each

CAIR designated representative that submitted a NUSA allowance request of the amount of CAIR NO_x Ozone Season allowances from the NUSA, if any, allocated for the control period to the new unit covered by the request.

g) The Agency shall allocate CAIR NO_x Ozone Season allowances to new units from the NUSA no later than November 15 after the applicable control period.

h) After a new affected unit has operated in one control period, it becomes an existing unit for the purposes of Section 225.540 of this Subpart only, and the Agency shall allocate CAIR NO_x Ozone Season allowances for that unit, for the control period commencing four years in the future pursuant to Section 225.540 of this Subpart. The new affected unit shall continue to receive CAIR NO_x Ozone Season allowances from the NUSA according to this Section until the unit is eligible to use the CAIR NO_x Ozone Season allowances allocated to the unit pursuant to Section 225.540 of this Subpart.

i) If, after the completion of the procedures in subsection (c) of this Section for a control period any unallocated CAIR NO_x Ozone Season allowances remain in the NUSA for the control period, the Agency shall, at a minimum, accrue those CAIR NO_x Ozone Season allowances for future control period allocations to new affected units. The Agency may from time to time elect to retire CAIR NO_x Ozone Season allowances in the NUSA that are in excess of 7,245 for the purposes of continued progress toward attainment and maintenance of National Ambient Air Quality Standards pursuant to the CAA.

Section 225.550 Monitoring, Recordkeeping and Reporting Requirements for Gross Electrical Output and Useful Thermal Energy

a) By January 1, 2007, or by the date of commencing commercial operation, whichever is later, the owner or operator of an affected unit shall install, calibrate, maintain, and operate a wattmeter; and shall measure gross electrical output in megawatt-hours on a continuous basis; and shall record the output of the wattmeter. If a generator is served by two or more units, the information to determine each unit's heat input for that control period shall also be recorded, so as to allow each unit's share of gross electrical output to be determined. If heat input data is used, the owner or operator shall comply with the applicable provisions 40 CFR 75, as incorporated by reference in Section 225.140 of this Part.

b) For a an affected unit that is a cogeneration unit by January 1, 2007, or by the date the affected unit commences to produce useful thermal energy, whichever is later,

the owner or operator of an affected unit with cogeneration capabilities shall install, calibrate, maintain, and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit, and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. Owners and operators of an affected unit that produces useful thermal energy but uses an energy transfer medium other than steam, e.g., hot water, glycol, shall install, calibrate, maintain, and operate the necessary meters to measure and record the necessary data to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the affected unit ceases to produce useful thermal energy, the owner or operator may cease operation of the meters, provided that operation of such meters shall be resumed if the affected unit resumes production of useful thermal energy.

c) By September 30, 2006, the owner or operator of an affected unit shall report to the Agency the gross electrical output for control periods 2001, 2002, 2003, 2004 and 2005, if available, and, the unit's useful thermal energy data, if applicable. If gross electric output is not available, heat input shall be used for control periods 2001, 2002, 2003, 2004, and 2005 that gross electrical output is not available. If a generator is served by two or more units, the documentation needed to determine each unit's share of the heat input of such units for that control period shall also be submitted. If heat input data is used, the owner or operator shall comply with the applicable provisions 40 CFR 75, as incorporated by reference in Section 225.140 of this Part.

d) Beginning with calendar year 2007, the designated representative of the affected unit shall submit to the Agency quarterly, by no later than January 31, April 30, July 31, and October 31 of each year, information for the affected unit's gross electrical output, on a monthly basis, and, if applicable, the unit's useful thermal energy for each month.

e) The owner or operator of an affected unit shall maintain on-site the monitoring plan detailing the monitoring system, maintenance of the monitoring system, including quality assurance activities.

f) The owner or operator of an affected unit shall retain records for at least 5 years from the date the record is created or the data collected in subsections (a) and (b) of this Section, the reports submitted to the Agency and USEPA in accordance with subsections (c) and (d) of this Section. The owner or operator of an affected unit shall retain the monitoring plan required in subsection (e) of this Section for at least five years from the date that it is replaced by a new or revised monitoring plan.

Section 225.555 Clean Air Set-Aside (CASA)

a) A project sponsor may apply for allowances from the CASA for sponsoring an energy efficiency and conservation, renewable energy, or clean technology project as set forth Section 225.560 of this Subpart by submitting the application required by Section 225.570 of this Subpart.

b) Notwithstanding subsection (a) of this Section, a project sponsor with an affected source that is out of compliance with this Subpart for a given control period may not apply for allowances from the CASA for that control period. If a source receives CAIR NO_x allowances from CASA and then is subsequently found to have been out of compliance with this Subpart for the applicable control period or periods, the project sponsor must restore the CAIR NO_x allowances that it received pursuant to its CASA request or an equivalent number of CAIR NO_x allowances to the CASA within six months of an Agency finding of noncompliance. These allowances shall be assigned to the fund from which they were distributed.

c) The Agency will not act as a mediator in situations where more than one project sponser requests CAIR NO_x allowances for the same project. If more than one project sponsor submits an application for allowances for the same project for the same control period, the Agency shall reject all such applications.

d) CAIR NO_x allowances from CASA shall be allocated in accordance with the procedures in Section 225.575 of this Subpart.

e) The project sponsor may submit an application that aggregates two or more projects under a CASA project category that would individually result in less than one allowance, but that equal at a minimum one whole allowance when aggregated. The Agency shall not allocate allowances for projects totaling less than one whole allowance after rounding.

Section 225.560 Energy Efficiency and Conservation, Renewable Energy, and Clean Technology Projects

a) Energy efficiency and conservation project means any of the following projects implemented in Illinois:

1) Demand side management projects that reduce the overall power demand by using less energy include:

A) Smart building management software that more efficiently regulates power flows.

B) The use of or replacement to high efficiency motors, pumps, compressors, or steam systems.

2) Energy efficient new building construction projects include:

A) ENERGY STAR qualified new home projects.

B) Measures to reduce conserve energy consumption beyond the requirements of the Illinois Energy Conservation Code for Commercial Buildings (20 ILCS 687/6-3).

C) New residential construction projects that qualify for Energy Efficient Tax Incentives under the Energy Policy Act of 2005, 42 U.S.C. §15801 (2005).

3) Supply-side energy efficiency projects include projects implemented to improve the efficiency in electricity generation by coal-fired power plants, and the efficiency of electrical transmission and distribution systems.

4) Highly efficient power generation project, such as, but not limited to, combined cycle projects, combined heat and power, and microturbines. To be considered a highly efficient power generation project under this subsection, a project must meet the thresholds listed below:

A) For combined heat and power projects generating both electricity and useful thermal energy for space, water, or industrial process heat, a rated-energy efficiency of at least 60 percent.

B) For combined cycle projects rated at greater than 0.50 MW, a rated-energy efficiency of at least 50 percent.

C) For microturbine projects rated at or below 0.50 MW and all other projects rated-energy efficiency of at least 40 percent.

b) Renewable energy unit means any of the following projects implemented in Illinois:

1) Zero-emission electric generating units, including wind, solar (thermal or photovoltaic), and hydropower projects. Eligible hydropower plants are restricted to new generators, that are not replacements of existing generators, that commence operation on or after January 1, 2006, and do not involve the significant expansion of an existing dam or the construction of a new dam.

2) Renewable energy units are those units that generate electricity using more than 50 percent of the heat input, on an annual basis, from dedicated crops grown for energy production or the capture systems for methane gas from landfills, water treatment plants or sewage treatment plants, and organic waste biomass, and other similar sources of non-fossil fuel energy. Renewable energy projects do not include energy from incineration by burning or heating of waste wood, tires, garbage, general household, institutional lunchroom or office waste, landscape waste, or construction or demolition debris.

c) Clean technology project for reducing emissions from producing electricity and useful thermal energy means any of the following projects implemented in Illinois:

1) Air pollution control equipment upgrades for control of NO_x emissions at existing coal-fired electric generating units, as follows: installation of a selective catalytic reduction (SCR) or selective non-catalytic reduction (SNCR) system, or other emission control technologies. Air pollution control upgrades do not include the addition of low NO_x burners, overfired air techniques, gas reburning techniques, flue gas conditioning techniques for the control of NO_x emissions, projects involving upgrades or replacement of electrostatic precipitators, or control equipment, such as activated carbon injection, specifically used for control of mercury. For this purpose, a unit shall be considered "existing" after it has been in commercial operation for at least eight years.

2) Clean coal technologies projects include:

A) Integrated gasification combined cycle (IGCC) plants.

B) Fluidized bed coal combustion.

d) Energy efficiency and conservation, renewable energy, or clean technology projects listed in subsections (a) through (c) of this Section shall not include

nuclear power projects; projects required to meet emission standards or technology requirements under State or federal law or regulation; or projects used to meet the requirements of a court order or consent decree; or a Supplemental Environmental Project (SEP). CASA allowances shall not be allocated to such projects.

e) Applications for projects that that are not specifically listed in subsections (a) through (c) of this Section, and that are not specifically excluded by subsection (d) of this Section, may be submitted to the Agency. Such application shall designate which category or categories from those listed in subsections (a)(1) through (c)(2)(B) of this Section best fits the proposed project and the applicable formula under Section 225.565(b) of this Section to calculate the number of allowances that it is requesting. The Agency shall determine whether the application is approvable based on a sufficient demonstration by the project sponsor that the project is a new type of energy efficiency, renewable energy, or clean technology project, similar in its effects as the projects specifically listed in subsection (a) through (c) of this Section.

f) Early adopter projects include projects that meet the criteria for any energy efficiency and conservation, renewable energy, or clean technology projects listed in subsections (a) , (b), (c), and (e) of this Section and commence construction between July 1, 2006, and December 31, 2012.

Section 225.565 CASA Allowances

a) The CAIR NO_x allowances for the CASA for each control period shall be assigned to the following categories of projects:

		Phase I (2009-2014)	Phase II (2015 and thereafter)
1)	Energy Efficiency and Conservation/ Renewable Energy	3684	3479
2)	Air Pollution Control Equipment Upgrades	1535	1448
3)	Clean Coal Technology Projects	1842	1738
4)	Early Adopters	614	580

b) The following formulas shall be used to determine the number of CASA allowances that may be allocated to a project per control period:

1) For an energy efficiency and conservation project pursuant to Sections 225.560(a)(1) through (a)(3) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity that was not consumed during a control period and the following formula:

$A = (MWh_c) \times (1.5 \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A	=	The number of allowances for a particular project.
MWh_c	=	The number of megawatt hours of electricity conserved during a control period by a project.

2) For a zero emission electric generating projects pursuant to Section 225.560(b)(1) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity generated during a control period and the following formula:

$A = (MWh_g) \times (2.0 \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A	=	The number of allowances for a particular project
MWh_g	=	The number of megawatt hours of electricity generated during a control period by a project.

3) For a renewable energy emission unit pursuant to Section 225.560(b)(2) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity generated during a control period and the following formula:

$A = (MWh_g) \times (0.5 \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A	=	The number of allowances for a particular project.
MWh_g	=	The number of MW hours of electricity generated

during a control period by a project.

4) For an air pollution control equipment upgrade project pursuant to Section 225.560(c)(1) of this Subpart, the number of allowances shall be calculated using the emission rate before and after replacement or improvement, and the following formula:

$A = (MWh_g) \times 0.10 \times (ER_B \text{ lb/MWh} - ER_A \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A	=	The number of allowances for a particular project.
MWh_g	=	The number of megawatt hours of electricity generated during a control period by a project.
ER_B	=	Average NO_x emission rate based on CEMS data from the most recent two control periods prior to the replacement or improvement of the control equipment in lb/MWh.
ER_A	=	Average NO_x emission rate for the applicable control period data based on CEMS data in lb/MWh.

5) For highly efficient power generation and IGCC projects pursuant to Sections 225.560(a)(4) and (c)(2) of this Subpart, the number of allowances shall be calculated using the number of megawatt hours of electricity the project generates during a control period and the following formula:

$A = (MWh_g) \times (1.0 \text{ lb/MWh} - ER \text{ lb/MWh}) / 2000 \text{ lb}$

Where:

A	=	The number of allowances for a particular project.
MWh_g	=	The number of megawatt hours of electricity generated during a control period by a project.
ER	=	Average NO_x emission rate for the control period based on CEMS data in 1b/MWh.

6) For a CASA project that commenced construction before December 31, 2012, in addition to the allowances allocated under subsections (b)(1) through (b)(5) of this Section, a project sponsor may also request

additional allowances under the early adopter project category pursuant to Section 225.460(e) of this Section based on the following formula:

$A = 1.0 + 0.10 \times \Sigma A_i$

Where:

A	=	The number of allowances for a particular project as determined in subsections (b)(1) through (b)(5) of this Section.
A_i	=	The number of allowances as determined in subsection (b)(1), (b)(2), (b)(3), (b)(4) or (b)(5) of this Section for a given project.

Section 225.570 CASA Applications

a) A project sponsor may request allowances if the project commenced construction on or after the dates listed below. The project sponsor may request and be allocated allowances from more than one CASA category for a project, if applicable.

1) Demand side management, energy efficient new construction, and supply side energy efficiency and conservation projects that commenced construction on or after January 1, 2003;

2) Fluidized bed coal combustion projects, efficient operations projects, or renewable energy emission units, which commenced construction on or after January 1, 2001; and

3) All other projects on or after July 1, 2006.

b) Beginning with the 2009 control period and each control period thereafter, a project sponsor may request allowances from the CASA. The application must be submitted to the Agency by May 1 of the control period for which the allowances are being requested.

c) The allocation shall be based on the electricity conserved or generated in the control period preceding the calendar year in which the application is submitted. To apply for a CAIR NO_x allocation from the CASA, project sponsors must provide the Agency with the following information:

1) Identification of the project sponsor, including name, address, type of organization, and name(s) of the principals or corporate officials.

2) The number of the CAIR NO_x general or compliance account for the project and the name of the associated CAIR account representative.

3) A description of the project or projects, location, the role of the project sponsor in the projects, and a general explanation of how the amount of energy conserved or generated was measured, verified, and calculated, and the number of allowances requested and the with supporting calculations. The number of allowances requested shall be calculated using the applicable formula from Section 225.570(b) of this Section.

4) Detailed information to support the request for allowances, including the following types of documentation for the measurement and verification of the NO_x emissions reductions, electricity generated, or electricity conserved using established measurement verification procedures, as applicable. The measurement and verification required shall depend on the type of project proposed.

   A) As applicable, documentation of the project's base and control period conditions and resultant base and control period energy data, using the procedures and methods included in *M&V Guidelines: Measurement and Verification for Federal Energy Projects,* incorporated by reference in Section 225.140 of this Part, or other method approved by the Agency. Examples include:

      i) Energy consumption and demand profiles;

      ii) Occupancy type;

      iii) Density and periods;

      iv) Space conditions or plant throughput for each operating period and season. (For example, in a building this would include the light level and color, space temperature, humidity and ventilation);

      v) Equipment inventory, nameplate data, location, condition; and

vi) Equipment operating practices (schedules and set points, actual temperatures/pressures).

B) Emissions data, including, if applicable, CEMS data;

C) Information for rated–energy efficiency including supporting documentation and calculations; and

D) Electricity, in MWh, generated or conserved for the applicable control period.

5) Notwithstanding the requirements of subsections (c)(4) of this Section, applications for fewer than five allowances may propose other reliable and applicable methods of quantification acceptable to the Agency.

6) Any additional information requested by the Agency to determine the correctness of the requested number of allowances, including site information, project specifications, supporting calculations, operating procedures, and maintenance procedures.

7) The following certification by the responsible official for the project sponsor and the applicable CAIR account representative for the project:

"I am authorized to make this submission on behalf of the project sponsor and the holder of the CAIR NO_x general account or compliance account for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with the statements and information submitted in this application and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information."

d) A project sponsor may request allowances from the CASA for each project a total number of control periods not to exceed the number of control periods listed below. After a project has been allocated allowances from CASA, subsequent requests for the project from the project sponsor shall include the information required by subsections (c)(1), (c)(2), (c)(3) and (c)(7) of this Section, a description of any changes, or further improvements made to the project, and

information specified in subsections (c)(5) and (c)(6) as specifically requested by the Agency.

1) For energy efficiency and conservation projects (except for efficient operation and renewable energy projects), for a total of eight control periods.

2) For early adopter projects, for a total of ten control periods.

3) For air pollution control equipment upgrades for a total of 15 control periods.

3) For renewable energy projects, clean coal technology, and highly efficient power generation projects, for each year that the project is in operation.

e) A project sponsor must keep copies of all CASA applications and the documentation used to support the application for at least five years.

Section 225.575 Agency Action on CASA Applications

a) By October 1, 2009, and each October 1 thereafter, the Agency shall determine the total number of allowances that are approvable for allocation to project sponsors based upon the applications submitted pursuant to Section 225.570 of this Subpart.

1) The Agency shall determine the number of CAIR NO_x allowances that are approvable based on the formulas and the criteria for such projects. The Agency shall notify a project sponsor within 90 days after receipt of an application if the project is not approvable, the number of allowances requested is not approvable, or additional information is needed by the Agency to complete its review of the application.

2) If the total number of CAIR NO_x allowances requested for approved projects is less than or equal to the number of CAIR NO_x allowances in the CASA project category, the number of allowances that are approved shall be allocated to each CAIR NO_x compliance or general account.

3) If more CAIR NO_x allowances are requested than the number of CAIR NO_x allowances in a given CASA project category, allowances shall be allocated on a pro-rata basis based on the number of allowances available, subject to further adjustment as provided for by subsection (b) of this

Section. CAIR NO_x allowances shall be allocated, transferred, or used as whole allowances. The number of whole allowances shall be determined by rounding down for decimals less than 0.5 and rounding up for decimals of 0.5 or greater.

b) If there are, after the completion of the procedures in subsection (a) of this Section for a control period, any CAIR NO_x allowances not allocated to a CASA project for the control period:

1) The remaining allowances in each CASA project category will accrue up to twice the number of allowances that are assigned to the project category each control period as set forth in Section 225.565 of this Subpart.

2) For control period 2011 and thereafter, allowances in a project category that are in excess of twice the number assign for the control period as set forth in Section 225.565 of this Subpart shall be redistributed to project categories that have fewer than twice the number of allowances assigned to that project category for the control period.

3) For control period 2011 and thereafter, the Agency shall then reallocate allowances to projects that received fewer allowances than requested and approved on a pro-rata basis, based on the total number of approved allowances for the projects.

4) For control period 2011 and thereafter, if after the redistribution of allowances pursuant to subsection (b)(2) any allowances remain, these allowances shall be reassigned to project categories that have fewer than twice the number of allowances annually assigned to that project category as set forth in Section 225.565 of this Subpart, after the allocation in subsection (b)(3) of this Section.

5) The Agency shall repeat the process of allocating allowances to CASA projects that received fewer allowances than requested and approved, and to reassigning allowances to project categories as set forth in subsections (b)(2), (b)(3), and (b)(4) of this Section, until no allowances remain to be reassigned between project categories and the approved allowance requests have been filled. If allowances still remain unallocated, the Agency may elect to retire any CAIR NO_x allowances that remain after all approved requests for allowances have been met and each project category has accrued twice the number of allowances assigned for that project

category to continue progress toward attainment or maintenance of the National Ambient Air Quality Standards pursuant to the CAA.