

ILLINOIS POLLUTION CONTROL BOARD

June 15, 2006

IN THE MATTER OF: )  
)  
PROPOSED NEW CLEAN AIR ) R06-26  
INTERSTATE RULES (CAIR) SO<sub>2</sub>, NO<sub>x</sub> ) (Rulemaking – Air)  
ANNUAL AND NO<sub>x</sub> OZONE SEASON )  
TRADING PROGRAMS, 35 ILL. ADM. )  
CODE 225. SUBPARTS A,C, D and E )

ORDER OF THE BOARD (by T.E. Johnson):

On May 30, 2006, the Board received a rulemaking proposal submitted by the Illinois Environmental Protection Agency (Agency) pursuant to Section 27 and 28 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/27 and 28 (2004)). Motions for expedited review, to hold the required hearings in Springfield and Collinsville, and for waiver of certain filing requirements accompanied the petition.

The Agency proposes a new Part 225 to reduce intrastate and interstate transport of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions from fossil-fuel-fired electric generating units (affected units), on an annual basis and on an ozone season basis of each calendar year. As explained in the statement of reasons (Statement), the Agency proposes the adoption of the Clean Air Interstate Rule (CAIR) SO<sub>2</sub> trading program, the CAIR NO<sub>x</sub> Annual trading program and the CAIR NO<sub>x</sub> Ozone Season trading program to accomplish this objective. Stat. at 1.

The proposed rule contains five subparts. As proposed, Subpart A includes general provisions, Subpart B is reserved, Subpart C contains the CAIR SO<sub>2</sub> trading program, Subpart D details the CAIR NO<sub>x</sub> Annual trading program, and Subpart E addresses the CAIR NO<sub>x</sub> Ozone Season trading program.

The Agency asserts that its proposal is intended to satisfy Illinois' obligations under the United States Environmental Protection Agency's (USEPA) Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone; Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call, (CAIR), 70 *Fed. Reg.* 25162 (May 12, 2005). Stat. at 1. The proposal is also intended to address, in part, the Agency's obligation to meet Clean Air Act (CAA) requirements for the control of fine particulate matter (PM<sub>2.5</sub>) and ozone in the Chicago and Metro East/St. Louis nonattainment areas. Stat. at 2.

As previously stated, the Agency has filed three motions with the proposal. The motion for expedited decision requests that the rule be promulgated by April 2007, and that the Board proceed to first notice without reaching a decision on the merits of the proposal. Mot. to Exp. at 3. The Agency asserts that the USEPA has adopted a CAIR Federal Implementation Plan (FIP) effective on June 27, 2006, and that the first "action of consequence" will be USEPA's making NO<sub>x</sub> allocations for the 2009 control period on July 30, 2007. Mot. to Exp. at 2. The Agency asserts that the rule needs to be adopted by April 2007, to allow Illinois to control the allocation

for 2009, and to timely submit NO<sub>x</sub> allocations to avoid the USEPA start of a “FIP sanctions clock.” Mot. to Exp. at 3.

The motion to hold hearings in Springfield and Collinsville (Mot. to Hold) asserts that there are 229 electric generating units (EGU) that will be subject to the proposed rule. Mot. to Hold at 1. The Agency argues that the city of Springfield is not only an affected area, but is centrally located for all the affected areas of the State and is an appropriate first hearing location pursuant to Section 102.412 (a) of the Board’s procedural rules. *Id.* The Agency contends that state administrative and financial constraints favor a Springfield forum for the first hearing in that both the Board and the Agency maintain offices in Springfield, and a large number of the Agency’s technical staff located in Springfield will be testifying and providing technical assistance in the rulemaking. Mot. to Hold at 2. The Agency asserts that the expenses to the State of Illinois due to transportation, food, and lodging for a non-Springfield venue will be considerable, and that holding at least one hearing in Springfield will allow for the Board and the Agency to conserve resources. *Id.*

The Agency further asserts that the city of Collinsville is an appropriate location for the second hearing as it is located with respect to affected units in the Southern portion of the state. Mot. to Hold at 3. The Agency contends that Collinsville is a reasonable commute from Springfield, and that the same factors favoring a hearing in Springfield favor the second hearing be held in Collinsville. *Id.* The Agency concludes that holding the hearings in Springfield and Collinsville would provide diversely located forums for input from the public throughout the State. Mot. to Hold at 4.

In the motion for waiver of requirements, the Agency asserts that the entire proposal consists of over 2,000 pages, and requests leave to file an original and four copies of the proposal plus five partial copies, instead of the original and nine copies generally required. Mot. to Waive at 1. The Agency states that the partial copies will consist of the table of contents, the statement of reasons, pleadings, and the proposed rules, but not the documents relied upon or the incorporations by reference. *Id.* The Agency also requests leave to serve partial copies on the Department of Natural Resources (DNR) and the Attorney General’s Office (AGO). Mot. to Waive at 2. The Agency asserts that both the DNR and the AGO have informed the Agency that partial copies of the proposal are sufficient. *Id.* Leave is also requested to file no copies of five documents incorporated by reference, as well as no copies of various documents relied upon in drafting. Mot. to Waive at 3.

The Agency’s proposal, including its statement of reasons and the full text of the proposed rule language, is available through the Clerk’s Office in Chicago (312-814-3620) and on the Board’s Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)) using the Clerk’s Office On-Line or “COOL.”

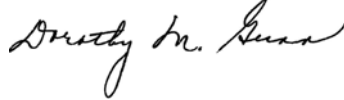
Responses to the Agency’s motions are generally allowed within 14 days after service of the motions. *See* 35 Ill. Adm. Code 101.500(d); 102.402. The motions were filed concurrently with the proposal on May 30, 2006. In order to allow potential interested participants time to respond to the motions, the Board will reserve ruling on all three motions.

The Board accepts the proposal for hearing, finding that the proposal generally satisfies the content requirements of the Act and the Board’s procedural rules for rulemaking proposals.

However, the Agency may have to file or serve additional copies and documents depending on the ultimate disposition of the Agency's motion to waive requirements. The assigned hearing officer is directed to proceed expeditiously under the rulemaking provisions of the Act (415 ILCS 5/27, 28 (2004)) and the Board's procedural rules. 35 Ill. Adm. Code 102.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 15, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board