

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF MIDWEST GENERATION, LLC,) AS 07-04
WILL COUNTY GENERATING STATION) (Adjusted Standard - Air)
FOR AN ADJUSTED STANDARD FROM)
35 ILL.ADM.CODE 225.230.)


NOTICE OF FILING

To:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Persons included on the
ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that we have today electronically filed with the Office of the Clerk of the Pollution Control Board MOTION TO FILE INSTANTER and STATUS REPORT, copies of which are herewith electronically served upon you.


Kathleen C. Bassi

Dated: October 25, 2007

Sheldon A. Zabel
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SCHIFF HARDIN, LLP
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MOTION TO FILE INSTANTER

NOW COMES Petitioner, MIDWEST GENERATION, LLC, WILL COUNTY GENERATING STATION, by and through its attorneys, SCHIFF HARDIN LLP, and moves the Board to grant its request to file the attached Status Report instanter. The Board had ordered on March 15, 2007, that Petitioner file a written status report 30 days after the Board takes action in the rulemaking docketed at R06-26, *Proposed New Clean Air Interstate Rule (CAIR) SO2, NOx Annual and NOx Ozone Season Trading Programs, 35 Ill.Adm.Code 225, Subparts A, C, D and E*. The Board entered its final order in that rulemaking on August 23, 2007, and so the Status Report was due on September 24, 2007. Petitioner inadvertently failed to file the Status Report but offers it at this time. Petitioner asserts that no harm to the environment has occurred as a result of its not having filed the Status Report timely. Further, until the U.S. Environmental Protection Agency indicated in its Direct Final Approval of the Illinois CAIR its disposition of Subpart F of the proposal on October 16, 2007, the status of this matter was in limbo.

WHEREFORE. Petitioner requests that the Board accept the attached Status Report in this matter at this time.

Respectfully submitted,

MIDWEST GENERATION, LLC,
WILL COUNTY GENERATING STATION

by:



One of Its Attorneys

Dated: October 25, 2007

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STATUS REPORT

NOW COMES Petitioner, MIDWEST GENERATION, LLC, WILL COUNTY GENERATING STATION, by and through its attorneys, SCHIFF HARDIN LLP, and submits this Status Report in this matter.

On January 10,2007, Petitioner timely filed a Petition for Adjusted Standard requesting relief from the requirements of the mercury rule adopted by the Board on December 21, 2006, in

Docket R06-25: In the Matter of Proposed New 35 Ill.Adm.Code 225 Control of Emissions from Large Combustion Sources (Mercury) ("the mercury rule"). The Board accepted the matter for hearing on February 15,2007.

On March 15, 2007, the Board granted Petitioner's request for a Stay of the Proceedings and ordered Petitioner to file a Status Report in this matter 30 days following the Board's final action on the rulemaking docketed at R06-26: *Proposed New Clean Air Interstate Rule (CAIR) SO2, NOx Annual and NOx Ozone Season Trading Programs, 35 Ill.Adm. Code 225, Subparts A, C, D and E.* That rule was finalized on August 23, 2007.

Subsequently, the Illinois Environmental Protection Agency ("Agency") submitted the final rule to the U.S. Environmental Protection Agency ("USEPA") for approval as part of Illinois' State Implementation Plan ("SIP").

Electronic Filing; Received, Clerk's Office, October 25, 2007

On October 16,2007, USEPA proposed, in a Direct Final Rule, to approve Illinois' CAIR as part of its SIP. 72 Fed.Reg. 58528 (October 16,2007), attached hereto for the Board's convenience. However, in that approval of the CAIR, USEPA specifically deferred action on Subpart F, the Combined Pollutant Standard ("CPS"), which directly affects Petitioner. Rather, USEPA stated that it plans to consider the CPS as part of its consideration of the mercury rule (R06-25). 72 Fed.Reg. 58533.

As discussed in Petitioner's Motion to Stay Proceedings, filed in this matter on March 1, 2007, the CPS addresses Petitioner's concerns regarding the hot-side precipitators at the Will County Generation Station, which are the subject of this matter. The Board adopted the CPS in substantially as it was proposed. However, until USEPA has approved the CPS as part of the SIP or as part of the Clean Air Act Section 111 Plan addressed in the mercury rule, Petitioner remains exposed to potential federal enforcement for failure to comply with the mercury reduction limitations that are part of Illinois' regulations that may be approved by USEPA.

Therefore, Petitioner requests that the Board continue this matter until USEPA has taken final action on the CPS.

WHEREFORE. for the reasons set forth above, Petitioner, MIDWEST GENERATION, LLC, WILL COUNTY GENERATING STATION, requests that the Board continue the Stay of Proceedings granted in its March 15,2007, Order until such time as USEPA has taken final action on its consideration of the Illinois mercury submittal and the CPS specifically.

Respectfully submitted,

MIDWEST GENERATION, LLC,
WILL COUNTY GENERATING STATION

by:



One of Its Attorneys

Dated: October 25,2007

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(c) * * *

(58) On July 14, 1982, the State submitted revisions to its State Implementation Plan for TSP and SO2 for Toledo Edison Company's Bay Shore Station in Lucas County, Ohio, except that the equivalent visible emission limitations in this submittal are no longer in effect.

(134) On July 18, 2000, the Ohio Environmental Protection Agency submitted revised rules for particulate matter. Ohio adopted these revisions to address State-level appeals by various industry groups of rules that the State adopted in 1995 that EPA approved in 1996. The revisions provide reformulated limitations on fugitive emissions from storage piles and plant roadways, selected revisions to emission limits in the Cleveland area, provisions for Ohio to follow specified criteria to issue replicable equivalent visible emission limits, the correction of limits for stationary combustion engines, and requirements for continuous emissions monitoring as mandated by 40 CFR part 51, Appendix P. The State's submittal also included modeling to demonstrate that the revised Cleveland area emission limits continue to provide for attainment of the PM10 standards. EPA is disapproving two paragraphs that would allow revision of limits applicable to Ford Motor Company's Cleveland Casting Plant through permit revisions without the full EPA review provided in the Clean Air Act.

(i) Incorporation by reference.

(A) The following rules in Ohio Administrative Code Chapter 3745-17 as effective January 31, 1998: Rule OAC 3745-17-01, entitled Definitions, Rule OAC 3745-17-03, entitled Measurement methods and procedures, Rule OAC 3745-17-04, entitled Compliance time schedules, Rule OAC 3745-17-07, entitled Control of visible particulate emissions from stationary sources, Rule OAC 3745-17-08, entitled Restriction of emission of fugitive dust, Rule OAC 3745-17-11, entitled Restrictions on particulate emissions from industrial processes, Rule OAC 3745-17-13, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county, and OAC 3745-17-14, entitled Contingency plan requirements for Cuyahoga and Jefferson counties.

(B) Rule OAC 3745-17-12, entitled Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county, as effective on January 31, 1998, except for paragraphs (1)(50) and (1)(51).

(C) Engineering Guide #13, as revised by Ohio EPA, Division of Air Pollution Control, on June 20, 1997.

(D) Engineering Guide #15, as revised by Ohio EPA, Division of Air Pollution Control, on June 20, 1997.

(ii) Additional material.

(A) Letter from Robert Hodanbosi, Chief of Ohio EPA's Division of Air Pollution Control, to EPA, dated February 12, 2003.

(B) Telefax from Tom Kalman, Ohio EPA, to EPA, dated January 7, 2004, providing supplemental documentation of emissions estimates for Ford's Cleveland Casting Plant.

(C) Memorandum from Tom Kalman, Ohio EPA to EPA, dated February 1, 2005, providing further supplemental documentation of emission estimates.

(D) E-mail from Bill Spires, Ohio EPA to EPA, dated April 21, 2005, providing further modeling analyses.

* * * * *
[FR Doc. E7-20253 Filed 10-15-07; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2007-o376; FRL-8477-4]

Approval of Implementation Plans of Illinois: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Illinois State Implementation Plan (SIP) submitted on September 14, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA is determining that the SIP revision fully meets the CAIR requirements for Illinois. Therefore, as a consequence of the SIP approval, EPA will also withdraw the CAIR Federal Implementation Plans (CAIR FIPs) concerning sulfur dioxide (SO2), nitrogen oxides (NOx) annual, and NOx ozone season emissions for Illinois. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006 and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of SO2 and NOx that significantly contribute to, and interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates (PM2.5) and/or ozone in any downwind state. CAIR

establishes State budgets for SO2 and NOx and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is approving, Illinois meets CAIR requirements by participating in the EPA-administered cap-and-trade programs addressing SO2, NOx annual, and NOx ozone season emissions.

DATES: This direct final rule will be effective December 17, 2007, unless EPA receives adverse comments by November 15, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket # EPA-R05-OAR-2007-0376, by one of the following methods:

- 1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- 2. E-mail: mooney.john@epa.gov.
- 3. Fax: (312) 886-5824
- 4. Mail: "EPA-R05-QAR-2007-0376", John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18n, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- 5. Hand Delivery or Courier: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18n, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket # EPA-R05-QAR-2007-0376. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> website is an

"anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact John Summerhays, Environmental Scientist, at (312) 886-6067 to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18n, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, summerhays.john@epa.gov.

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- I. What Actions Is EPA Taking?

EPA is approving a revision to the Illinois SIP, submitted in final form on September 14, 2007, reflecting rules adopted by Illinois on August 23, 2007. In its SIP revision, Illinois meets CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing S₀₂, NO_x annual, and NO_x ozone season emissions. EPA has determined that the SIP meets the applicable requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning S₀₂, NO_x annual, and NO_x ozone season emissions for Illinois. That action will remove and reserve 40 CFR 52.745 and 52.746. The withdrawal of the CAIR FIPs for Illinois is a conforming amendment that must be made once the SIP approval is effective because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Illinois. Once the SIP approval becomes effective, EPA no longer has authority for the FIPs. Thus, EPA will not have the option of maintaining the FIPs following the full SIP approval. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

II. What is the Regulatory History of CAIR and the CAIR FIPs?

CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for PM_{2.5} and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of S₀₂, which is a precursor to PM_{2.5} formation, and/or NO_x, which is a precursor to both ozone and PM_{2.5}

formation. For jurisdictions that contribute significantly to downwind PM_{2.5} nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for S₀₂ and annual State-wide emission reduction requirements for NO_x. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_x for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and PM_{2.5} NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and PM_{2.5} NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR S₀₂, NO_x annual, and NO_x ozone season trading programs, as appropriate. The CAIR FIP S₀₂, NO_x annual, and NO_x ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (S₀₂, NO_x annual, and NO_x ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP

provisions (e.g., the methodology for allocating NO_x allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for PM_{2.5} and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

III. What are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO₂ and NO_x and is to be implemented in two phases. The first phase of NO_x reductions starts in 2009 and continues through 2014, while the first phase of SO₂ reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_x and SO₂ starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO₂ and NO_x budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_x SIP Call trading programs in their CAIR NO_x ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP

revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_x allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include NO_x SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_x ozone season trading program;
2. Provide for State allocation of NO_x annual or ozone season allowances using a methodology chosen by the State;
3. Provide for State allocation of NO_x annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or
4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO₂, NO_x annual, or NO_x ozone season trading programs under the opt-in provisions in the model rules.

An approved CAIR full SIP revision addressing EGUs' SO₂, NO_x annual, or NO_x ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions.

V. Description of Illinois' CAIR SIP Submittal

A. The Background of Illinois' Submittal

On March 29, 2007, Illinois submitted draft rules and voluminous supporting material for addressing CAIR requirements. These rules had been proposed by the Illinois Environmental Protection Agency (Illinois EPA) to the Illinois Pollution Control Board (IPCB) on May 30, 2006. (IPCB is the board responsible for adopting environmental regulations in Illinois.) The IPCB held hearings on these proposed rules on October 10 through October 12, 2006, and again on November 28 and November 29, 2006. Following these

hearings and following discussions with interested parties, the Illinois EPA recommended a revised set of rules to the IPCB on January 5, 2007. These rules constitute the regulatory portion of the submittal by Illinois on March 29, 2007. In addition to the rules, Illinois' March 2007 submittal included voluminous supporting material used in the state rulemaking process to support the rules. This material included such documents as transcripts of hearings and Alternative Control Techniques documents describing NO_x control options. IPCB then solicited further comment on refined versions of the rules. On June 29, 2007, Illinois EPA submitted comments on the "first notice" rules to EPA, including recommended rule language.

IPCB adopted final rules on August 23, 2007, effective August 31, 2007. IPCB makes the full set of relevant documents, including the final rules, available on its Web site, either by accessing <http://www.ipcb.state.il.us/> and selecting docket R2006-D26 or by directly accessing <http://www.ipcb.state.il.us/coollexternallCaseView2.asp?referer=coolsearch&case=R2006-026>.

Illinois EPA submitted the final rules by a submittal postmarked September 14, 2007. Although the submittal letter was undated, EPA considers this package to have been submitted on the postmark date, i.e., September 14, 2007. This submittal also included interim draft rules and other materials developed during the IPCB rulemaking process after March 2007. The focus of EPA's rulemaking is on whether the final rules that Illinois adopted would satisfy EPA's requirements under CAIR.

E. Summary of Illinois' Rules

Part 225 of Title 35 of the Illinois Administrative Code, entitled "Control Of Emissions From Large Combustion Sources," includes numerous provisions addressing utility emissions of SO₂, NO_x, and mercury. These rules are designed to address the requirements of both the CAIR and the Clean Air Mercury Rule (CAMR). Today's action addresses the CAIR portions of the Part 225 rules.

Part 225 includes six subparts: Subpart A, entitled "General Provisions," Subpart B, entitled "Control Of Mercury Emissions From Coal-Fired Electric Generating Units," Subpart C, entitled "CAIR SO₂ Trading Program," Subpart D, entitled "CAIR NO_x Annual Trading Program," Subpart E, entitled "CAIR NO_x Ozone Season Trading Program, and Subpart F, entitled "Combined Pollutant Standards." The CAIR provisions are

addressed in subparts A, C, D, and E. Subpart B, which addresses mercury, was not included in Illinois' submittal and was submitted separately. Subpart F was included in Illinois' September 2007 submittal but may be considered a part of Illinois' mercury plan; EPA will address Subpart F as part of EPA's separate rulemaking addressing Illinois' mercury rules.

Subpart A contains general provisions, most notably including definitions and incorporation by reference. The definitions reflect the definitions given in the CAIR model rules and are included for terms that are used in Illinois' rules. (Although some definitions are pertinent to the regulation of mercury, today's action only addresses the adequacy of these definitions for CAIR purposes. Separate rulemaking will address the adequacy of these definitions for mercury regulation purposes.) The incorporation by reference incorporates almost the entirety of the CAIR model rules. With respect to the S02 program in 40 CFR part 96, Illinois' rules incorporate subpart AAA (CAIR S02 Trading Program General Provisions); 40 CFR part 96, subpart BBB (CAIR Designated Representative for CAIR S02 Sources); 40 CFR part 96, subpart FFF (CAIR S02 Allowance Tracking System); 40 CFR part 96, subpart GGG (CAIR S02 Allowance Transfers); and 40 CFR part 96, subpart HHH (Monitoring and Reporting), with two exceptions. Illinois does not incorporate 40 CFR 96.204 (entitled "Applicability"), and 96.206 (entitled "Standard requirements"). For these two sections, Illinois instead has adopted language that is effectively identical to the language in EPA's model rule. Illinois also has adopted language addressing permitting requirements instead of incorporating subpart CCC by reference, and Illinois does not provide for opt-ins and therefore neither incorporates subpart III by reference nor adopts any similar state language. Illinois' incorporation by reference for the ozone season NOx program and for the annual NOx program closely parallels the incorporation by reference for the S02 program. EPA's model rules for NOx, unlike the model rules for S02, have allowance allocation provisions (in 40 CFR part 96, subparts E and EE, respectively, and in related provisions in 40 CFR 96.105(b)(2) and 96.305(b)(2)). However, Illinois did not incorporate these allocation provisions by reference and instead adopted its own provisions.

Subpart C of Illinois' rule addresses the S02 requirements of CAIR. This subpart includes six sections, entitled, "Purpose," "Applicability,"

"Compliance Requirements," "Appeal Procedures," "Permit Requirements," and "Trading Program" respectively. The purpose is to regulate S02 emissions in accordance with EPA's CAIR requirements. The requirements apply in general to boilers and combustion turbines that serve generators with capacity to produce greater than 25 megawatts, with an exemption for some cogeneration units and solid waste incineration units. Units subject to these rules must comply with allowance holding requirements and emissions monitoring requirements incorporated by reference from 40 CFR part 96. Procedures for appealing EPA decisions in the S02 trading program are the procedures given in 40 CFR part 78. Owners or operators of units subject to the program must apply for a permit that will specify the requirements under the program that will apply to the source. Allowance allocations are the allocations determined in the Acid Rain Program under title IV of the CAA. After the end of each year starting with 2010, allowances held by a source are deducted to cover the source's emissions, according to retirement ratios that EPA has mandated.

Subpart D of Illinois' rules addresses the NOx annual trading program of the CAIR. The sections described above in Subpart C of Illinois' S02 program rules are also present in Subpart D, using nearly identical language. In addition, Subpart D includes extensive sections addressing allowance allocations. Unlike the S02 program, which relies on allowances issued under the Acid Rain Program, the annual NOx program relies on newly issued allowances. EPA gives states substantial flexibility in the allocation of NOx allowances so long as the total number of allowances allocated is within the state's budget that EPA has established and so long as certain timing requirements concerning the determination and submission to the Administrator of allocations are met. Section VI.D below describes Illinois' NOx allowance allocation systems in more detail.

Subpart E of Illinois' rules address the NOx ozone season trading program. These rules are again quite similar to the rules in Subparts C and D (for the S02 and the annual NOx trading programs, respectively), including rules providing for allowance allocations that are quite similar to the provisions in Subpart D. Again, this allocation system is described in more detail in section VI.D below.

The CAIR NOx ozone season program is designed to replace the program known as the NOx SIP Call trading program. Therefore, a state like Illinois

that is subject to both sets of requirements must adopt CAIR rules that suitably replace the state's NOx SIP Call trading program rules. Most notably, the state must adopt control measures that will achieve the amount of NOx emission reductions that were projected to be achieved by sources that were covered by the NOx SIP Call trading program but that are not covered by the CAIR NOx ozone season trading program. In addition, such states must address several transition issues such as the status of allowances issued under the NOx SIP Call that remain in circulation after the NOx SIP Call ends.

Illinois' CAIR submittal does not fully address the replacement of the NOx SIP Call. Illinois' CAIR NOx ozone season trading program addresses the emissions from EGUs and do not address emissions from non-EGUs that are covered by the NOx SIP Call trading program. Non-EGUs in Illinois will thus not be part of the CAIR NOx ozone season trading program. Illinois is instead pursuing "reasonably available control technology (RACT) rules" that would subject the non-EGUs to specific emission limits. Illinois' rules also do not fully address the issues relating to transition from the NOx SIP Call program to the CAIR program.

VI. Analysis of Illinois' CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NOx annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NOx budgets for 2009-2014 and for 2015 and thereafter, respectively. EPA derived the State NOx annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State S02 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of S02 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of S02 emissions in the CAIR trading program.

In today's action, EPA is approving Illinois' SIP revision that adopts the

NO_x budgets and conforms with the S02 budgets established for the State in CAIR. For NO_x annual emissions, these budgets are 76,230 tons for each year from 2009 to 2014 and 63,525 tons for each year thereafter. For NO_x ozone season emissions these budgets are 30,701 for each year from 2009 to 2014 and 28,981 tons for each year thereafter. For S02, Illinois' rules provide for retirement ratios that, in concert with the number of allowances that EPA will issue under the Acid Rain Program, will reflect the budgets of 192,671 tons for each year from 2010 to 2014 and 134,869 tons for each year thereafter.

B. CAIR Cap-and-Trade Programs

The CAIRNO_x annual and ozone-season model trading rules both largely mirror the structure of the NO_x SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_x annual and ozone-season model rules are similar, there are some differences. For example, the NO_x annual model rule (but not the NO_x ozone season model rule) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_x annual emissions. As a further example, the NO_x ozone season model rule reflects the fact that the eArn NO_x ozone season trading program replaces the NO_x SIP Call trading program after the 2008 ozone season and is coordinated with the NO_x SIP Call program. The NO_x ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_x SIP Call allowances to be used for compliance in the CAIR NO_x ozone-season trading program. In addition, States have the option of continuing to meet their NO_x SIP Call requirement by participating in the CAIR NO_x ozone season trading program and including all their NO_x SIP Call trading sources in that program.

The provisions of the CAIR S02 model rule are also similar to the provisions of the NO_x annual and ozone season model rules. However, the S02 model rule is coordinated with the ongoing Acid Rain S02 cap-and-trade program under CAA title IV. The S02 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010-2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR S02 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be

freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR S02 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than state implementation. The CAIR model S02, NO_x annual, and NO_x ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated S02, NO_x annual, and NO_x ozone season trading programs.

In the SIP revision, Illinois chose to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for S02, NO_x annual, and NO_x ozone season emissions. Illinois has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for S02, NO_x annual, and NO_x ozone season emissions.

C. Applicability Provisions for non-EGU NO_x SIP Call Sources

In general, the CAIR model trading rules apply to any stationary, fossil-fueled boiler or stationary, fossil-fueled combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_x ozone season program only, those units in the State's NO_x SIP Call trading program that are not EGUs as defined under CAIR. However, Illinois has chosen not to expand the applicability provisions of the CAIR NO_x ozone season trading program to include all non-EGUs in the State's NO_x SIP Call trading program.

D. NO_x Allowance Allocations

Under the NO_x allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_x annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_x allowance

allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_x allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The baSIS for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

Illinois applied this flexibility to adopt systems for allocating allowances for the CAIR NO_x annual trading program and for the CAIR NO_x ozone season trading program that differ in several respects from the allocation systems in EPA's model rule. For both trading programs, Illinois sets aside 5 percent of the allowances for new sources and 25 percent for a "clean air set aside." Under the clean air set aside, Illinois distributes allowances to three types of projects: (1) Projects that use renewable energy or that improve energy efficiency, (2) clean coal technology projects, including clean coal burning equipment (mainly integrated gasification combined cycle units), and (3) upgrades to pollution control equipment. While EPA expects Illinois' utilities to install several emission control systems even without this provision, this provision provides further incentive for Illinois utilities to install controls. Illinois also dedicates some of the set aside allowances for distribution for projects that are done relatively early. The rules require project sponsors to apply for allowances from this set aside, and the rules identify the criteria by which Illinois is to determine the number of allowances to be issued for a given project. The rules specify an initial subdivision of the clean air set aside according to project type, but the rules also provide for redistributing allocations among subdivisions if Illinois receives more or fewer requests for particular types of projects. The rules also specify how the new source set aside is to be allocated.

Illinois' rules provide that the allowances that are not set aside are allocated according to electrical output, with the caveat that the utilities are initially given the option of determining output either directly or as a fixed efficiency factor times heat input. In

either case, the output value is further adjusted, depending on the type of fuel burned, to reflect the emission rates expected from burning different fuels. In particular, the output from coal-fired units is unadjusted, the output from oil-fired units is multiplied by 0.6, and the output from units combusting other fuels is multiplied by 0.4.

EPA notes that, in sections 225.450(e) and 225.550(e), Illinois requires that, for purposes of monitoring output, the owner or operation of a CAIR unit must maintain a monitoring plan meeting certain requirements of "40 CFR part 60 or 75, as applicable." Sections 225.450 and 225.550 address "Monitoring, Recordkeeping, and Reporting Requirements for Gross Electrical Output and Useful Thermal Energy", and paragraph (e) of each of these sections specifically mention "gross electrical output." Consequently, EPA interprets sections 225.450(e) and 225.550(e) as limited to plans for monitoring output and as consistent with, and in addition to, the monitoring plan requirements under 40 CFR part 96, subparts HH and HHHH, which requirements are referenced in sections 225.410(c)(1) and 225.510(c)(1).

E. Allocation of NO_x Allowances From Compliance Supplement Pool

The CAIR establishes a CSP to provide an incentive for early reductions in NO_x annual emissions. The CSP consists of 200,000 CAIR NO_x annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_x reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls. However, Illinois has chosen not to distribute the allowances of a CSP.

F. Individual Opt-in Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. In the model rule, a non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into

a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Illinois has chosen not to allow non-EGUs to opt into the CAIRNO_x annual trading program, the CAIR NO_x ozone season trading program, or the CAIR S0₂ trading program.

VD. EPA Actions

EPA is issuing direct final approval of Illinois' CAIR submittal. Under this SIP revision, Illinois is choosing to participate in the EPA-administered cap-and-trade programs for S0₂, NO_x annual, and NO_x ozone season emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(0) and (aa), with regard to NO_x annual and NO_x ozone season emissions, and 40 CFR 51.124(0), with regard to S0₂ emissions. EPA is determining that the SIP meets the requirements of CAIR. As a consequence of the SIP approval, the Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning S0₂, NO_x annual, and NO_x ozone season emissions for Illinois. That action will remove and reserve 40 CFR 52.745 and 52.746.

More specifically, EPA is approving Subparts A, C, D, and E of Part 225 of Title 35 of the Illinois Administrative Code as submitted on September 14, 2007. The specific rules being approved include: In Subpart A, Sections 225.120, 225.130, 225.140, and 225.150; in Subpart C, Sections 225.300, 225.305,

225.310, 225.315, 225.320, and 225.325; in Subpart D, Sections 225.400, 225.405, 225.410, 225.415, 225.420, 225.425, 225.430, 225.435, 225.440, 225.445, 225.450, 225.455, 225.460, 225.465, 225.470, 225.475, and 225.480; and in Subpart E, Sections 225.500, 225.505, 225.510, 225.515, 225.520, 225.525, 225.530, 225.535, 225.540, 225.545, 225.550, 225.555, 225.560, 225.565, 225.570, and 225.575. Section 225.100 (entitled "Severability") was not included in Illinois' September 2007 submittal but was included in Illinois' mercury rule submittal; EPA plans to address this section as part of its rulemaking on that mercury rule submittal. EPA is also deferring action on Subpart F, which EPA also plans to address in its rulemaking on Illinois' rules regarding mercury control.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 17, 2007 without further notice unless we receive relevant adverse written comments by November 15, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective December 17, 2007.

VIII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355. May 22,2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951. November 9,2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10,1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885. April 23. 1997). because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Congressional Review Act

The Congressional Review Act, 5 U.S.c. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 eFR Part 52

Environmental protection, Air pollution control, Electric utilities,

Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21.2007.

Bharat Mathur, Acting Regional Administrator, Region 5.

_ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52-[AMENDED]

_ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Q-Illinois

- 2. Section 52.720 is amended by adding paragraph (c)(178) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c)* * *

(178) On September 14, 2007, the Illinois Environmental Protection Agency submitted rules and related material to address requirements under the Clean Air Interstate Rule. These rules mandate participation of electric generating units in EPA-run trading programs for annual emissions of sulfur dioxide, annual emissions of nitrogen oxides, and ozone season emissions of nitrogen oxides. These rules provide a methodology for allocating allowances to subject sources and require these sources to hold sufficient allowances to accommodate their emissions and to meet various monitoring, recordkeeping, and reporting requirements. EPA is approving the submitted provisions of Subparts A, C, D, and E of Part 225 of Title 35 of Illinois Administrative Code; EPA is deferring action on Subpart F.

(i) Incorporation by reference.

(A) Title 35 of the Illinois Administrative Code: Environmental Protection. Subtitle B: Air Pollution. Chapter I: Pollution Control Board, Part 225: Control of Emissions from Large Combustion Sources, effective August 31,2007, including Subpart A: General Provisions, Subpart C: Clean Air Act Interstate Rule (CAIR) S02 Trading Program, Subpart D: CAIR NOx Annual Trading Program, and Subpart E: CAIR NOx Ozone Season Trading Program.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 25th day of October, 2007, I have served electronically the attached MOTION TO FILE INSTANTER and STATUS REPORT, upon the following persons:

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

and electronically by first class mail, postage affixed, to the persons listed on the ATTACHED SERVICE LIST.



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