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

IN THE MATTER OF: )  
)  
PROPOSED NEW 35 Ill. ADM. CODE 217, SUBPART U, ) R01-17  
NO<sub>x</sub> CONTROL AND TRADING PROGRAM FOR ) (Rulemaking-Air)  
SPECIFIED NO<sub>x</sub> GENERATING UNITS, SUBPART X, )  
VOLUNTARY NO<sub>x</sub> EMISSIONS REDUCTION PROGRAM, )  
AND AMENDMENTS TO 35 ILL. ADM. CODE 211 )

**TESTIMONY OF DENNIS LAWLER**

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

**PURPOSE OF RULEMAKING**

The Illinois Environmental Protection Agency (Agency) is proposing amendments to Part 217 and Part 211 of the Board's air pollution control regulations to control the emissions of nitrogen oxides (NO<sub>x</sub>) from specified fossil fuel-fired stationary boilers, combustion turbines, and

combined cycle systems, and to allow voluntary reductions of emissions of NOx from other specified sources for the purpose of transferring NOx allowances created by those reductions from the non-trading portion of the statewide NOx budget, as established in the NOx SIP Call, to either the electrical generating unit (EGU) or non-EGU portion of the NOx trading budget, during the period May 1 through September 30 of each year, beginning in 2003. The proposed amendments are intended to satisfy a portion of Illinois' obligation to submit a State Implementation Plan (SIP) to address the requirements of the NOx SIP Call and to meet the applicable requirements of Section 9.9 of the Act. Included in this proposal are new Subpart U, NOx Control and Trading Program for Specified NOx Generating Units, 35 Ill. Adm. Code 217; Subpart X, Voluntary NOx Emissions Reduction Program, 35 Ill. Adm. Code 217; and conforming amendments to Parts 217 and 211.

## **DEVELOPMENT OF PROPOSAL**

### **A. The Ozone NAAQS**

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

The State of Illinois has the primary responsibility under the CAA for ensuring that Illinois meets the ozone NAAQS and is required to submit SIPs that specify emission limitations, control and other measures necessary for attainment, maintenance and enforcement of the NAAQS within the State.

**B. The NOx SIP Call**

Since 1988, the Agency has worked with the States of Indiana, Michigan, and Wisconsin, through the Lake Michigan Air Directors' Consortium (LADCO), to assess ozone air quality in the Lake Michigan area and to develop appropriate strategies to attain the 1-hour ozone NAAQS. Despite large local reductions in emissions of volatile organic materials (VOM), an ozone precursor, since the 1990 CAA amendments, the Lake Michigan NAA has not attained the NAAQS.

In regard to the Lake Michigan NAA, the Agency has determined, in cooperation with LADCO, that substantial reductions in transported ozone and ozone precursors would be needed, in addition to reductions of VOM emissions in the NAA, for the Lake Michigan NAA to attain the 1-hour NAAQS. The Agency found similar results for the St. Louis/Metro-East NAA.

On March 2, 1995, Mary D. Nichols, Assistant Administrator for USEPA's Air and Radiation Division, published a memorandum entitled "Ozone Attainment Demonstrations" (Nichols Memo). In this memorandum, USEPA "recognized that development of the necessary technical information, as well as the control measures necessary to achieve the large level of reductions likely to be required had been particularly difficult for the States affected by ozone transport." In the Nichols Memo, USEPA established a two-phase process for States with severe ozone NAAs to develop approvable SIPs. Under Phase I, States were required to complete pre-November 1994 SIP requirements, submit regulations sufficient to meet the initial ROP requirements, and submit supporting modeling analyses. Phase II called for a two-year consultative process to assess national/regional strategies to address ozone transport in the eastern United States and required submittal of all remaining ROP submittals, an attainment demonstration including any additional rules needed to attain, and any regional controls needed for attainment by all areas in the region.

In response to the growing awareness of the problem of ozone transport, the Environmental Council of States (ECOS) recommended the formation of a national workgroup to assess the problem and to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to the Nichols Memo, the Ozone Transport Assessment Group (OTAG), a partnership among USEPA, the 36 eastern-most States and the District of Columbia, industry representatives, and environmental groups, was formed to assess the ozone transport phenomenon.

The Agency on behalf of the State actively participated in OTAG's efforts by chairing and staffing the OTAG Policy Group and by providing significant technical expertise in analyzing the impact of ozone transport on air quality within the Lake Michigan and Metro-East/St. Louis NAAs and surrounding States. Agency technical staff worked in conjunction with other OTAG participants to conduct modeling analyses to determine the magnitude and direction of ozone transport in the eastern half of the United States.

In July 1997, OTAG completed its work and made recommendations to USEPA concerning the regional emissions reductions necessary to reduce transported ozone as an obstacle to attainment in downwind areas. Based on OTAG's recommendations and other information, USEPA issued the NOx SIP Call rule on October 27, 1998.

After the NOx SIP Call was adopted as a final rule, a number of petitions for review of the rule were filed by various parties in the D.C. Circuit Court of Appeals. That Court upheld the bulk of the NOx SIP Call on March 3, 2000. On June 22, 2000, the Court removed the stay of the NOx SIP Call in effect since May 25, 1999, and denied motions for rehearing.

In the NOx SIP Call, USEPA determined that sources in 23 jurisdictions emit NOx in amounts that contribute to ozone formation. USEPA then identified reductions that could be achieved using “highly cost-effective measures” and set state-wide budgets for NOx for each affected jurisdiction, including line items for various sectors based on the levels of reduction that could be achieved from sources within those sectors with highly cost effective measures. Additionally, USEPA established emissions caps for large electrical generating units (EGUs), i.e., those serving generators greater than 25 megawatts, and for large non-EGUs, i.e., those industrial boilers and turbines with a maximum design heat input of 250 mmbtu/hr. USEPA established these caps based upon their determination of highly cost-effective control measures and the application of an emissions rate of 0.15 lbs/mmbtu NOx to large EGUs and the assumption of a 60% reduction from uncontrolled levels of NOx emissions from large non-EGUs. The statewide, but not capped portions, of the budget for cement kilns assumed a 30% reduction from uncontrolled NOx levels and for large stationary internal combustion engines, assumed a 90% reduction from uncontrolled NOx levels.

Although the statewide NOx budgets were based on the levels of reduction achievable through highly cost-effective control measures, the NOx SIP Call allows each State to determine what measures to adopt to meet its statewide budget. The NOx SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NOx statewide budget. The NOx SIP Call encourages States to adopt a cap and trade program for large EGUs and large non-EGUs as a cost-effective strategy to meet the capped budgets and provides an interstate NOx trading program that USEPA will administer for the States that adopt the federal program. If States do

choose to participate in the national trading program, they must submit SIPs that conform to the trading program at 40 CFR part 96.

On August 30, 2000, the United States Court of Appeals for the District of Columbia issued an order that the NOx SIP Call implementation date be revised from May 1, 2003, to May 31, 2004. Consistent with the mandate of Section 9.9, the Agency is proposing this submittal to the Board providing for this later attainment date.

Additionally, Section 9.9 of the Illinois Environmental Protection Act recognizes that the NOx SIP Call had been adopted and finds that emissions trading is a cost-effective means of obtaining reductions in NOx emissions. This Section requires the Agency to propose and the Board to adopt regulations necessary to both participate in the federal NOx Trading Program, 415 ILCS 5/9.9(b), and to allow the transfer to EGUs and non-EGUs of any allowances created by voluntary reductions realized by other units. 415 ILCS 5/9.9(d)(3). This Section also places restrictions on the enforcement of any rules adopted to allow participation in the federal NOx Trading Program. The Section provides in pertinent part:

The regulations promulgated by the Board pursuant to subsections (b) and (d) of this Section shall not be enforced until the later of May 1, 2003, or the first day of the control season subsequent to the calendar year in which all of the other States subject to the provisions of the NOx SIP call that are located in USEPA Region V or that are contiguous to Illinois have adopted regulations to implement NOx trading programs and other required reductions of NOx emissions pursuant to the NOx SIP Call, and such regulations have received final approval by USEPA as part of the respective States' SIPs for ozone, or a final FIP for ozone promulgated by USEPA is effective for such other States.

Our proposal today requires implementation of necessary control measures by May 31, 2004, but includes the contingency language to ensure that sources in Illinois are not required to comply with this proposal until neighboring States that are subject to the NOx SIP Call and USEPA Region V

States that are subject to the NOx SIP Call (i.e., Indiana, Michigan, Kentucky and Ohio) have an approved SIP or a FIP has been proposed addressing the NOx SIP Call. Our proposal today, establishing emissions limitations for non-EGUs and providing for the transfer of allowances resulting from voluntary reductions, meets the requirements of Section 9.9 and the NOx SIP Call.

**C. Agency Outreach Process**

In late 1998, following the issuance of the NOx SIP Call, the Agency met with representatives of industry and environmental groups to notify them of the Agency's intent to proceed with development of rules responsive to the SIP Call. The Agency established a NOx Technical Committee comprised of Agency technical staff and representatives of environmental groups and affected sources to evaluate the NOx emissions inventory and modeling efforts that Illinois and LADCO were undertaking as part of the additional subregional modeling recommended by OTAG. The NOx Technical Committee met initially on December 21, 1998, January 26, 1999, and March 3, 1999. Additional meetings were held during 1999 and in early 2000.

In early 1999, the Agency commenced regular meetings to develop the concepts to be embodied in the Boards' rule addressing the flexible portions of the Federal NOx Trading Program. The Agency met or spoke by conference call with representatives of both the EGUs and non-EGUs in Illinois and the Illinois Environmental Regulatory Group (IERG) on a number of occasions last year, including February 23 and May 17.

On May 25, 1999, the U.S. Court of Appeals for the D.C. Circuit issued its stay of the submittal date for SIPs under the NOx SIP Call in response to the appeal of that rule filed by various parties. Negotiations on the NOx SIP Call proposal then ceased. When the U. S. Court of Appeals

for the D. C. Circuit upheld the NOx SIP Call in its March 3, 2000 opinion, the Agency again turned to developing a program that would comply with the NOx SIP. The Agency again began meeting with representatives of industry in the summer and fall of this year to resume development of the rules proposed here. After a series of meetings and conference calls and other communications, including on June 8, June 14, June 29, July 12, August 9 and September 13, the Agency developed this proposal.

Historically, the Agency, regulated sources, and environmental groups have been able to agree on many of the proposals submitted to the Board as fast-track rulemakings under Section 28.5 of the Act. This is not entirely the case with this particular proposal. The Agency has worked with industry, environmental groups and the Illinois Environmental Regulatory Group to develop this proposal, but has not reached complete agreement with these groups before submitting it to the Board.

**D. Other Testimony**

In other testimony that will be provided by the Agency, the Board and public will hear a review of the various control technology alternatives and a discussion of the rule proposal itself. We believe that this proposal is necessary to meet federal and state obligations relating to the NOx SIP Call.



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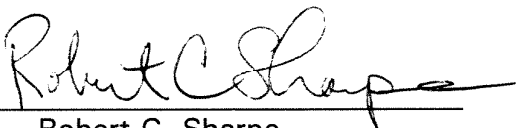
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RO1-17  
(Rulemaking-Air)

APPEARANCE

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

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Robert C. Sharpe  
Deputy Counsel  
Bureau of Air

DATED: November 16, 2000

P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544

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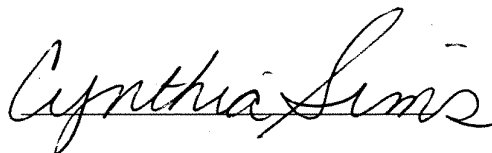
I, the undersigned, on oath state that I have served the attached Testimony of Laurel L. Kroack, Richard Forbes, and Dennis Lawler; Appearance; and Withdrawal of an Appearance upon the person to whom it is directed, by placing in an envelope addressed to:

TO: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Bobb Beauchamp, Hearing Officer  
Illinois Pollution Control Board  
State of Illinois Center  
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Chicago, Illinois 60601

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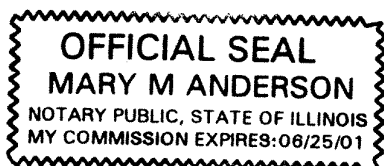


SUBSCRIBED AND SWORN TO BEFORE ME

this 16<sup>th</sup> day of November, 2000



Notary Public



**SERVICE LIST**

**R 01-17**

Karen Bernoteit  
IL Environmental Regulatory Group  
215 East Adams Street  
Springfield, IL 62701

Amy Clyde  
Dynergy Midwest Generation, Inc.  
2828 North Monroe Street  
Decatur, IL 62526

Matthew Dunn  
Office of The Attorney General  
James R. Thompson Center  
188 West Randolph Street  
Chicago, IL 60601

Lenny Dupis  
Dominion Generation  
5000 Dominion Blvd  
Glen Allen, VA 23060

Joe Griffiths  
ENSR  
1021 North Grand Ave. East  
Springfield, IL 62794

Katherine D. Hodge  
Hodge & Dwyer  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705-5776

Alan Jirik  
Corn Products  
6500 Archer Road  
Bedford Park, IL 60501

Bryan Keyt  
Bell, Boyd & Lloyd  
70 W. Madison St., #3300  
Chicago, IL 60602

Robert Lawley  
Department of Natural Resources  
524 S. Second Street  
Springfield, IL 62701-1787

Scott Miller & Kent Wanninger  
Midwest Generation EME, LLC  
1 Financial Place  
440 S. LaSalle St., #3500  
Chicago, IL 60605

William Murray  
Office of Public Utilities  
800 East Monroe  
Springfield, IL 62757

Brooke Peterson  
IL Environmental Regulatory Group  
215 East Adams Street  
Springfield, IL 62701

Nancy J. Rich  
Katten Muchin & Zavis  
525 W. Monroe Street, Suite 1600  
Chicago, IL 60661-3693

Mary Schoen  
Enron Corp.  
P.O. Box 1188  
Houston, TX 77251

Steven Whitworth  
Ameren Services  
1901 Chouteau  
P.O. Box 66149, MC 602  
St. Louis, MO 63166-6149