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**STATE OF ILLINOIS
Pollution Control Board**

ILLINOIS POLLUTION CONTROL BOARD

November 7, 2008

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM:) R06-22
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Air)
PART 217)

HEARING OFFICER ORDER

In an order dated July 2, 2008, the hearing officer noted that the Illinois Environmental Protection Agency (Agency or Illinois EPA) on June 25, 2008, had filed a status report in this rulemaking docket (Rept. 1). That status report stated that the Agency

is in the process of evaluating whether the proposed amendments are now moot, or whether some of the amendments would best be addressed in an upcoming rulemaking concerning the transition of both industrial boilers and utility boilers from the NO_x [nitrogen oxides] SIP [State Implementation Plan] Call trading program to the Clean Air Interstate Rule (CAIR) trading program. The Illinois EPA is planning to proceed with that rulemaking this Fall, and, at that time it will be in the best position to determine whether any outstanding issues from R06-22 would be best addressed in that rulemaking or whether the above proposal, in an amended format, should proceed. Rept. 1 at 1.

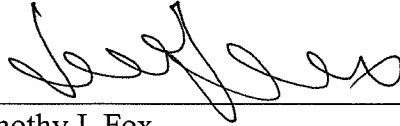
Also in the July 2, 2008 order, the hearing officer directed the Agency as the proponent in this matter to file on or before October 30, 2008, "a brief status report addressing whether the Agency has determined whether to proceed in this docket with an amended proposal or to address the proposed amendments in another docket."

On October 30, 2008, the Agency filed its status report (Rept. 2). That status report states that, "[o]n July 11, 2008, the Clean Air Interstate Rule ("CAIR") was vacated by the United States Court of Appeals; however the requirements to address interstate transport from large NO_x sources remain." Rept. 2 at 1, citing North Carolina v. EPA, No. 05-1244 (D.C. Cir. 2008). Citing that decision and a pending request by the United States Environmental Protection Agency [USEPA] for a rehearing, the Agency further states that it

is in the process of evaluating whether the proposed amendments affecting the NO_x SIP Call trading program are now moot, or whether some of the amendments would best be addressed when the Illinois EPA addresses its obligations to mitigate interstate transport. The timetable for addressing that requirement is uncertain at this time; the Illinois EPA will be in a better position to determine its timetable when the court rules on USEPA's and other petitioners' requests for rehearing. Rept. 2 at 1.

Accordingly, as proponent in this matter, the Agency is directed to file a brief status report addressing whether it has determined that proposed amendment affecting the NO_x SIP Call are moot or whether it would deal with the proposed amendments in meeting its obligations to mitigate interstate transport. Specifically, the Agency is directed to file that brief status report on or before Monday, March 9, 2009, the first business day after 120 days from the date of this order.

IT IS SO ORDERED.



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