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May 13, 2009
Jack Lavin, Director
Department of Commerce and Economic Opportunity
620 East Adams Street, S-6
Springfield, Illinois 62704

RECEIVED
CLERK'S OFFICE

MAY 13 2009

STATE OF ILLINOIS
Pollution Control Board

Re: Request for Economic Impact Study for: **Nitrogen Oxide (NOx) Trading Program Sunset Provisions for Electric Generating Units (EGU's): New 35 Ill. Adm. Code 217.751, R09-20**

Dear Director Lavin:

On May 7, 2009, the Board accepted for hearing an April 21, 2009 regulatory proposal filed by the Illinois Environmental Protection Agency in **Nitrogen Oxide (NOx) Trading Program Sunset Provisions for Electric Generating Units (EGU's): New 35 Ill. Adm. Code 217.751, R09-20**. I am writing to request that your Department conduct an economic impact study concerning this proposal. For reasons explained below, if at all possible, we would appreciate your response to this request no later than June 30, 2009.

In its statement of reasons, the IEPA correctly states that Illinois adopted both the NOx Trading Program rules at 35 Ill. Adm. Code Part 217 and the Clean Air Interstate Rule (CAIR) at 35 Ill. Adm. Code Part 225 after adoption of similar rules by the United States Environmental Protection Agency (USEPA). USEPA has approved both sets of rules for inclusion in the State Implementation Plan (SIP) for ozone attainment. As do the USEPA rules, the Illinois CAIR provisions as set forth in 35 Ill. Code Part 225.Subpart E include a trading program for control of NOx emissions during the ozone season that replaces the provisions in Part 217.Subpart W for EGUs beginning with the 2009 control period (May 1 through September 30) and thereafter.

But, due to a federal court ruling concerning the federal CAIR rules in *North Carolina v. USEPA*, 531 F.3d 896 (C.A.D.C. Cir. 2008), USEPA must take additional action concerning its rules. To solve the problem of applicability of two sets of rules, in 40 CFR 51.123(bb)(1)(i), USEPA has provided that states such as Illinois with approved CAIR programs may revise their applicable SIP so that the provisions of the NO, SIP Call Trading Program do not apply to affected EGUs.

IEPA's proposal requesting the Board to amend the Illinois rules is the first step to revision of the SIP. IEPA correctly states that EGUs must comply with two sets of duplicative administrative requirements for the 2009 ozone season and beyond: the Illinois Clean Air Interstate Rule (CAIR) requirements at Part 225 and the Illinois NOx Trading Program at Part 217. To address and remove the duplication, the IEPA proposes to sunset the provisions of the NOx

Trading Program, by adding a new Part 217.751 to sunset the rules beginning with the 2009 ozone control season.

The Board denied an IEPA motion for expedited consideration, but authorized first-notice publication of the proposal without comment on the proposal's merits. The Board stated that it simply cannot grant expedited consideration to every rulemaking, noting that it was currently giving expedited treatment to three other air rulemakings. But, the Board also agreed to proceed with the proceeding as quickly as possible. Consequently, hearings are scheduled for June 18, 2009 in Chicago and July 23, 2009 in Springfield.

Since 1998, Section 27 (b) of the Environmental Protection Act has required the Board to:

(1) request that the Department of Commerce and Economic Opportunity (formerly the Department of Commerce and Community Affairs) conduct a study of the economic impact of the proposed rules. The Department may within 30 to 45 days of such request produce a study of the economic impact of the proposed rules. At a minimum, the economic impact study shall address a) economic, environmental, and public health benefits that may be achieved through compliance with the proposed rules, b) the effects of the proposed rules on employment levels, commercial productivity, the economic growth of small businesses with 100 or less employees, and the State's overall economy, and c) the cost per unit of pollution reduced and the variability of company revenues expected to be used to implement the proposed rules; and

(2) conduct at least one public hearing on the economic impact of those rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules. 415 ILCS 5/27(b) (2006).

There is no decision deadline in this rulemaking, but the Board intends to proceed expeditiously. The Board has scheduled a hearing on this proposal for June 18 and July 23, 2009, and due to budget constraints does not intend to hold a third hearing. Under these circumstances, the Board asks that you respond to this request as soon as you conveniently can, but in any event no later than June 30, 2009; this would allow the Board to give the public the 20-day notice of the results of your decisionmaking required by Section 27(b) of the Act. If I, or my staff, can provide you with any additional information, please let me know.

Thank you in advance for your prompt response.

Sincerely,

G. Tarran Guind

cc: Warren Ribley, DCEO
John T. Therriault, Assistant Clerk of the Board