

Board Adopts Final Rule to Sunset Nitrogen Oxide Trading Program Provisions for Electric Generating Units

On October 15, 2009, the Illinois Pollution Control Board adopted a final rule which sunsets the provisions for the Nitrogen Oxides (NO_x) Trading Program rules for electrical generating units (EGUs). On April 21, 2009, the Illinois Environmental Protection Agency (IEPA) filed a proposal with the Board seeking the change. The proposal was docketed as In the Matter of: Nitrogen Oxide (NO_x) Trading Program Sunset Provisions for Electric Generating Units (EGUs): New 35 Ill. Adm. Code 217.751 (Sept. 17, 2009). This rule becomes effective upon filing with the Illinois Secretary of State.

In its statement of reasons, the IEPA states that Illinois adopted both the NO_x 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 CAIR provisions as set forth in 35 Ill. Code Part 225.Subpart E include a trading program for control of NO_x 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, 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_x SIP Call Trading Program do not apply to affected EGUs.

Adding the New Part 217.751 to sunset the rules beginning with the 2009 ozone control season is the first step to revision of the SIP.

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge. Hard copies may be obtained for \$.75 per page from the Clerk's office

Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601