

## **Board Authorizes First Notice Publication of an IEPA Proposal to Sunset Nitrogen Oxide Trading Program Provisions for Electric Generating Units in R09-20**

On May 7, 2009, the Illinois Pollution Control Board authorized first notice publication, without comment on the merits, of an Illinois Environmental Protection Agency (IEPA) proposal that would sunset the provisions of the Nitrogen Oxides (NO<sub>x</sub>) Trading Program rules for electrical generating units (EGUs). The rulemaking proposal is docketed as In the Matter of: Nitrogen Oxide (NO<sub>x</sub>) Trading Program Sunset Provisions for Electric Generating Units (EGUs): New 35 Ill. Adm. Code 217.751. IEPA filed this proposal with the Board on April 21, 2009, along with a motion for expedited review requesting immediate first notice publication and the scheduling of hearings as soon as possible.

In its statement of reasons, the IEPA states that Illinois adopted both the NO<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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 NO<sub>x</sub> Trading Program at Part 217. To address and remove the duplication, the IEPA proposes to sunset the provisions of the NO<sub>x</sub> Trading Program, by adding a new Part 217.751 to sunset the rules beginning with the 2009 ozone control season.

The Board denied the 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. Hearings are scheduled for June 18, 2009 in Chicago and July 23, 2009 in Springfield.

Publication of these proposed amendments in the *Illinois Register* will begin a 45-day public comment period, during which anyone may file a public comment with the Board. The Board encourages persons to file public comments on these proposed amendments. The docket number for this rulemaking, R09-20, should be indicated on the public comment.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address:

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

In addition, public comments may be filed electronically through COOL at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629

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

For more information contact Kathleen Crowley at 312-814-6929 or email at [crowlek@ipcb.state.il.us](mailto:crowlek@ipcb.state.il.us).