

1 AMENDMENT TO HOUSE BILL 3553

2 AMENDMENT NO. _____. Amend House Bill 3553 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Environmental Protection Act is amended
5 by changing Section 9.9 as follows:

6 (415 ILCS 5/9.9)

7 Sec. 9.9. Nitrogen oxides trading system.

8 (a) The General Assembly finds:

9 (1) That USEPA has issued a Final Rule published in
10 the Federal Register on October 27, 1998, entitled
11 "Finding of Significant Contribution and Rulemaking for
12 Certain States in the Ozone Transport Assessment Group
13 Region for Purposes of Reducing Regional Transport of
14 Ozone", hereinafter referred to as the "NOx SIP Call",
15 compliance with which will require reducing emissions of
16 nitrogen oxides ("NOx");

17 (2) That reducing emissions of NOx in the State
18 helps the State to meet the national ambient air quality
19 standard for ozone;

20 (3) That emissions trading is a cost-effective
21 means of obtaining reductions of NOx emissions.

22 (b) The Agency shall propose and the Board shall adopt

1 regulations to implement an interstate NOx trading program
2 (hereinafter referred to as the "NOx Trading Program") as
3 provided for in 40 CFR Part 96, including incorporation by
4 reference of appropriate provisions of 40 CFR Part 96 and
5 regulations to address 40 CFR Section 96.4(b), Section
6 96.55(c), Subpart E, and Subpart I. In addition, the Agency
7 shall propose and the Board shall adopt regulations to
8 implement NOx emission reduction programs for cement kilns
9 and stationary internal combustion engines.

10 (c) Allocations of NOx allowances to large electric
11 generating units ("EGUs") and large non-electric generating
12 units ("non-EGUs"), as defined by 40 CFR Part 96.4(a), shall
13 not exceed the State's trading budget for those source
14 categories to be included in the State Implementation Plan
15 for NOx.

16 (d) In adopting regulations to implement the NOx Trading
17 Program, the Board shall:

18 (1) assure that the economic impact and technical
19 feasibility of NOx emissions reductions under the NOx
20 Trading Program are considered relative to the
21 traditional regulatory control requirements in the State
22 for EGUs and non-EGUs;

23 (2) provide that emission units, as defined in
24 Section 39.5(1) of this Act, may opt into the NOx Trading
25 Program;

26 (3) provide for voluntary reductions of NOx
27 emissions from emission units, as defined in Section
28 39.5(1) of this Act, not otherwise included under
29 paragraph (c) or (d)(2) of this Section to provide
30 additional allowances to EGUs and non-EGUs to be
31 allocated by the Agency. The regulations shall further
32 provide that such voluntary reductions are verifiable,
33 quantifiable, permanent, and federally enforceable;

34 (4) provide that the Agency allocate to non-EGUs

1 allowances that are designated in the rule, unless the
 2 Agency has been directed to transfer the allocations to
 3 another unit subject to the requirements of the NOx
 4 Trading Program, and that upon shutdown of a non-EGU, the
 5 unit may transfer or sell the NOx allowances that are
 6 allocated to such unit; and

7 (5) provide that the Agency shall set aside
 8 annually a number of allowances, not to exceed 5% of the
 9 total EGU trading budget, to be made available to new
 10 EGUs; and -

11 (6) ~~(A) provide that~~ those EGUs that commence
 12 commercial operation, as defined in 40 CFR Section 96.2,
 13 at a time that is more than half way through the control
 14 period in 2003 shall return to the Agency any allowances
 15 that were issued to it by the Agency and were not used
 16 for compliance in 2004. ~~(B)--The-Agency-may--charge--EGUs~~
 17 ~~that--commence-commercial-operation,--as-defined-in-40-CFR~~
 18 ~~Section-96.2,--on--or--after--January--1,--2003,--for--the~~
 19 ~~allowances-it-issues-to-them.~~

20 (d-5) The Agency may sell NOx allowances to sources in
 21 Illinois that are subject to 35 Ill. Adm. Code 217, either
 22 Subpart U or W, as follows:

23 (1) any unearned Early Reduction Credits set aside
 24 for non-EGUs under 35 Ill. Adm. Code 217, Subpart U, but
 25 only to those sources that make qualifying early
 26 reductions of NOx in 2003 pursuant to 35 Ill. Adm. Code
 27 217 for which the source did not receive an allocation
 28 thereunder. If the Agency receives requests to purchase
 29 more ERCs than are available for sale, allowances shall
 30 be offered for sale to qualifying sources on a pro-rata
 31 basis;

32 (2) any remaining Early Reduction Credits allocated
 33 under 35 Ill. Adm. Code 217, Subpart U or W, that could
 34 not be allocated on a pro-rata, whole allowance basis,

1 but only to those sources that made qualifying early
2 reductions of NOx in 2003 pursuant to 35 Ill. Adm. Code
3 217 for which the source did not receive an allocation;

4 (3) any allowances under 35 Ill. Adm. Code 217,
5 Subpart W, that remain after each 3-year allocation
6 period that could not be allocated on a pro-rata, whole
7 allowance basis pursuant to the provisions of Subpart W;
8 and

9 (4) any allowances requested from the New Source
10 Set Aside for those sources that commenced operation, as
11 defined in 40 CFR Section 96.2, on or after January 1,
12 2004.

13 (d-10) The selling price for ERC allowances shall be 70%
14 of the market price index for 2005 NOx allowances, determined
15 by the Agency as follows:

16 (1) using the mean of 2 or more published market
17 price indexes for the 2005 NOx allowances as of October
18 6, 2003; or

19 (2) if there are not 2 published market price
20 indexes for 2005 NOx allowances as of October 6, 2003,
21 the Agency may use any reasonable indication of market
22 price.

23 (e) The Agency may adopt procedural rules, as necessary,
24 to implement the regulations promulgated by the Board
25 pursuant to subsections (b) and (d) and to implement
26 subsections (d-5), (d-10), (i), and (j) subsection-(i) of
27 this Section.

28 (f) Notwithstanding any provisions in subparts T, U, and
29 W of Section 217 of Title 35 of the Illinois Administrative
30 Code to the contrary, compliance with the regulations
31 promulgated by the Board pursuant to subsections (b) and (d)
32 of this Section is required by May 31, 2004.

33 (g) To the extent that a court of competent jurisdiction
34 finds a provision of 40 CFR Part 96 invalid, the

1 corresponding Illinois provision shall be stayed until such
2 provision of 40 CFR Part 96 is found to be valid or is
3 re-promulgated. To the extent that USEPA or any court of
4 competent jurisdiction stays the applicability of any
5 provision of the NOx SIP Call to any person or circumstance
6 relating to Illinois, during the period of that stay, the
7 effectiveness of the corresponding Illinois provision shall
8 be stayed. To the extent that the invalidity of the
9 particular requirement or application does not affect other
10 provisions or applications of the NOx SIP Call pursuant to 40
11 CFR 51.121 or the NOx trading program pursuant to 40 CFR Part
12 96 or 40 CFR Part 97, this Section, and rules or regulations
13 promulgated hereunder, will be given effect without the
14 invalid provisions or applications.

15 (h) Notwithstanding any other provision of this Act, any
16 source or other authorized person that participates in the
17 NOx Trading Program shall be eligible to exchange NOx
18 allowances with other sources in accordance with this Section
19 and with regulations promulgated by the Board or the Agency.

20 (i) There is hereby created within the State Treasury an
21 interest-bearing special fund to be known as the NOx Trading
22 System Fund. Moneys generated from the sale of NOx
23 allowances from the New Source Set Aside or the sale of
24 allowances pursuant to subsection (d-5) of this Section shall
25 be deposited into the Fund. This Fund ~~7~~-which shall be used
26 and administered by the Agency for the purposes stated below:

27 (1) To accept funds from persons who purchase NOx
28 allowances from the New Source Set Aside from the Agency;

29 (2) To disburse the proceeds of the sale of the NOx
30 allowances from the New Source Set Aside, to the extent
31 that proceeds remain after the Agency has recouped the
32 reasonable costs incurred by the Agency in the
33 administration of the NOx SIP Call Program, sales
34 pro-rata to the owners or operators of the EGUs that

1 received allowances from the Agency but not from the
2 Agency's New Source Set Aside set-aside, in accordance
3 with regulations that may be promulgated by the Agency;
4 and

5 (3) To finance the reasonable costs incurred by the
6 Agency in the administration of the NOx SIP Call Program
7 Trading-System.

8 (j) Moneys generated from the sale of early reduction
9 credits shall be deposited into the Clean Air Act Permit Fund
10 created pursuant to Section 39.5(18)(d) of this Act, and the
11 proceeds shall be used and administered by the Agency to
12 finance the costs associated with the Clean Air Act Permit
13 Program.

14 (Source: P.A. 91-631, eff. 8-19-99; 92-12, eff. 7-1-01;
15 92-279, eff. 8-7-01.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law."