

1 AN ACT concerning nitrogen oxide.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

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
23 regulations to implement an interstate NOx trading program
24 (hereinafter referred to as the "NOx Trading Program") as
25 provided for in 40 CFR Part 96, including incorporation by
26 reference of appropriate provisions of 40 CFR Part 96 and
27 regulations to address 40 CFR Section 96.4(b), Section
28 96.55(c), Subpart E, and Subpart I. In addition, the Agency
29 shall propose and the Board shall adopt regulations to
30 implement NOx emission reduction programs for cement kilns
31 and stationary internal combustion engines.

1 (c) Allocations of NOx allowances to large electric
2 generating units ("EGUs") and large non-electric generating
3 units ("non-EGUs"), as defined by 40 CFR Part 96.4(a), shall
4 not exceed the State's trading budget for those source
5 categories to be included in the State Implementation Plan
6 for NOx.

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

9 (1) assure that the economic impact and technical
10 feasibility of NOx emissions reductions under the NOx
11 Trading Program are considered relative to the
12 traditional regulatory control requirements in the State
13 for EGUs and non-EGUs;

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

17 (3) provide for voluntary reductions of NOx
18 emissions from emission units, as defined in Section
19 39.5(1) of this Act, not otherwise included under
20 paragraph (c) or (d)(2) of this Section to provide
21 additional allowances to EGUs and non-EGUs to be
22 allocated by the Agency. The regulations shall further
23 provide that such voluntary reductions are verifiable,
24 quantifiable, permanent, and federally enforceable;

25 (4) provide that the Agency allocate to non-EGUs
26 allowances that are designated in the rule, unless the
27 Agency has been directed to transfer the allocations to
28 another unit subject to the requirements of the NOx
29 Trading Program, and that upon shutdown of a non-EGU, the
30 unit may transfer or sell the NOx allowances that are
31 allocated to such unit; and

32 (5) provide that the Agency shall set aside
33 annually a number of allowances, not to exceed 5% of the
34 total EGU trading budget, to be made available to new

1 EGU's.

2 (A) Those EGUs that commence commercial
3 operation, as defined in 40 CFR Section 96.2, at a
4 time that is more than half way through the control
5 period in 2003 shall return to the Agency any
6 allowances that were issued to it by the Agency and
7 were not used for compliance in 2004.

8 (B) The Agency may charge EGUs that commence
9 commercial operation, as defined in 40 CFR Section
10 96.2, on or after January 1, 2003, for the
11 allowances it issues to them.

12 (C) The Agency may sell to any Illinois source
13 subject to 35 Ill. Adm. Code Part 217, Subpart U or
14 W, (i) any unearned early reduction credits
15 allocated to non-EGUs under Subpart U, (ii) any
16 remaining early reduction credits allocated under
17 Subpart U or W that could not be allocated on a
18 pro-rata, whole allowance basis pursuant to the
19 provisions of Subpart U or W, as applicable, and
20 (iii) any allowances under Subpart W that remain
21 after each 3-year allocation period that could not
22 be allocated on a pro-rata, whole allowance basis
23 pursuant to the provisions of Subpart W.

24 (e) The Agency may adopt procedural rules, as necessary,
25 to implement the regulations promulgated by the Board
26 pursuant to subsections (b) and (d) and to implement
27 subsection (i) of 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, which shall be used and administered by the
 23 Agency for the purposes stated below:

24 (1) To accept funds from persons who purchase NOx
 25 allowances or early reduction credits from the Agency;

26 (2) ~~(Blank) To disburse the proceeds of the NOx~~
 27 ~~allowances sales pro-rata to the owners or operators of~~
 28 ~~the EGUs that received allowances from the Agency but not~~
 29 ~~from the Agency's set-aside, in accordance with~~
 30 ~~regulations that may be promulgated by the Agency; and~~

31 (3) To finance the reasonable costs incurred by the
 32 Agency in the administration of the NOx Trading System or
 33 other costs associated with the air pollution control
 34 program.

1 (Source: P.A. 91-631, eff. 8-19-99; 92-12, eff. 7-1-01;
2 92-279, eff. 8-7-01.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.