

1 AN ACT concerning air pollution.

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

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

20 (3) That emissions trading is a cost-effective means of
21 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 and
31 stationary internal combustion engines.

32 (c) Allocations of NOx allowances to large electric

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

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

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

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

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

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

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

33 (6) ~~(A)~~ provide that those EGUs that commence
34 commercial operation, as defined in 40 CFR Section 96.2, at
35 a time that is more than half way through the control
36 period in 2003 shall return to the Agency any allowances

1 that were issued to it by the Agency and were not used for
2 compliance in 2004. ~~(B) The Agency may charge EGUs that~~
3 ~~commence commercial operation, as defined in 40 CFR Section~~
4 ~~96.2, on or after January 1, 2003, for the allowances it~~
5 ~~issues to them.~~

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

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

17 (2) any remaining Early Reduction Credits allocated
18 under 35 Ill. Adm. Code 217, Subpart U or W, that could not
19 be allocated on a pro-rata, whole allowance basis, but only
20 to those sources that made qualifying early reductions of
21 NOx in 2003 pursuant to 35 Ill. Adm. Code 217 for which the
22 source did not receive an allocation;

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

27 (4) any allowances requested from the New Source Set
28 Aside for those sources that commenced operation, as
29 defined in 40 CFR Section 96.2, on or after January 1,
30 2004.

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

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

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

4 (e) The Agency may adopt procedural rules, as necessary, to
5 implement the regulations promulgated by the Board pursuant to
6 subsections (b) and (d) and to implement subsections (d-5),
7 (d-10), (i), and (j) ~~subsection (i)~~ of this Section.

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

13 (g) To the extent that a court of competent jurisdiction
14 finds a provision of 40 CFR Part 96 invalid, the corresponding
15 Illinois provision shall be stayed until such provision of 40
16 CFR Part 96 is found to be valid or is re-promulgated. To the
17 extent that USEPA or any court of competent jurisdiction stays
18 the applicability of any provision of the NOx SIP Call to any
19 person or circumstance relating to Illinois, during the period
20 of that stay, the effectiveness of the corresponding Illinois
21 provision shall be stayed. To the extent that the invalidity of
22 the particular requirement or application does not affect other
23 provisions or applications of the NOx SIP Call pursuant to 40
24 CFR 51.121 or the NOx trading program pursuant to 40 CFR Part
25 96 or 40 CFR Part 97, this Section, and rules or regulations
26 promulgated hereunder, will be given effect without the invalid
27 provisions or applications.

28 (h) Notwithstanding any other provision of this Act, any
29 source or other authorized person that participates in the NOx
30 Trading Program shall be eligible to exchange NOx allowances
31 with other sources in accordance with this Section and with
32 regulations promulgated by the Board or the Agency.

33 (i) There is hereby created within the State Treasury an
34 interest-bearing special fund to be known as the NOx Trading
35 System Fund. Moneys generated from the sale of NOx allowances
36 from the New Source Set Aside or the sale of allowances

1 pursuant to subsection (d-5) of this Section shall be deposited
2 into the Fund. This Fund ~~, which~~ shall be used and administered
3 by the Agency for the purposes stated below:

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

6 (2) To disburse the proceeds of the sale of the NOx
7 allowances from the New Source Set Aside, to the extent
8 that proceeds remain after the Agency has recouped the
9 reasonable costs incurred by the Agency in the
10 administration of the NOx SIP Call Program, ~~sales~~ pro-rata
11 to the owners or operators of the EGUs that received
12 allowances from the Agency but not from the Agency's New
13 Source Set Aside ~~set-aside~~, in accordance with regulations
14 that may be promulgated by the Agency; and

15 (3) To finance the reasonable costs incurred by the
16 Agency in the administration of the NOx SIP Call Program
17 ~~Trading System~~.

18 (j) Moneys generated from the sale of early reduction
19 credits shall be deposited into the Clean Air Act Permit Fund
20 created pursuant to Section 39.5(18)(d) of this Act, and the
21 proceeds shall be used and administered by the Agency to
22 finance the costs associated with the Clean Air Act Permit
23 Program.

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

26 Section 99. Effective date. This Act takes effect upon
27 becoming law.