

AN ACT concerning air pollution.

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

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

(415 ILCS 5/9.9)

Sec. 9.9. Nitrogen oxides trading system.

(a) The General Assembly finds:

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

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

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

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

(c) Allocations of NOx allowances to large electric

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

(d) In adopting regulations to implement the NO_x Trading Program, the Board shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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