

1 AN ACT concerning environmental protection.

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 and adding Section 9.10 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 EGUs.

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 ~~2002~~ 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 ~~2003~~.

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 (e) The Agency may adopt procedural rules, as necessary,
13 to implement the regulations promulgated by the Board
14 pursuant to subsections (b) and (d) and to implement
15 subsection (i) of this Section.

16 (f) Notwithstanding any provisions in subparts T, U, and
17 W of Section 217 of Title 35 of the Illinois Administrative
18 Code to the contrary, compliance with the regulations
19 promulgated by the Board pursuant to subsections (b) and (d)
20 of this Section is required by May 31, 2004. ~~The regulations~~
21 ~~promulgated by the Board pursuant to subsections (b) and (d)~~
22 ~~of this Section shall not be enforced until the later of May~~
23 ~~17, 2003, or the first day of the control season subsequent to~~
24 ~~the calendar year in which all of the other states subject to~~
25 ~~the provisions of the NOx SIP Call that are located in USEPA~~
26 ~~Region V or that are contiguous to Illinois have adopted~~
27 ~~regulations to implement NOx trading programs and other~~
28 ~~required reductions of NOx emissions pursuant to the NOx SIP~~
29 ~~Call, and such regulations have received final approval by~~
30 ~~USEPA as part of the respective states' SIPs for ozone, or a~~
31 ~~final FIP for ozone promulgated by USEPA is effective for~~
32 ~~such other states.~~

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 from the Agency;

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

33 (Source: P.A. 91-631, eff. 8-19-99.)

1 (415 ILCS 5/9.10 new)

2 Sec. 9.10. Fossil fuel-fired electric generating plants.

3 (a) The General Assembly finds and declares that:

4 (1) fossil fuel-fired electric generating plants
5 are a significant source of air emissions in this State
6 and have become the subject of a number of important new
7 studies of their effects on the public health;

8 (2) existing state and federal policies, that allow
9 older plants that meet federal standards to operate
10 without meeting the more stringent requirements
11 applicable to new plants, are being questioned on the
12 basis of their environmental impacts and the economic
13 distortions such policies cause in a deregulated energy
14 market;

15 (3) fossil fuel-fired electric generating plants
16 are, or may be, affected by a number of regulatory
17 programs, some of which are under review or development
18 on the state and national levels, and to a certain extent
19 the international level, including the federal acid rain
20 program, tropospheric ozone, mercury and other hazardous
21 pollutant control requirements, regional haze, and global
22 warming;

23 (4) scientific uncertainty regarding the formation
24 of certain components of regional haze and the air
25 quality modeling that predict impacts of control measures
26 requires careful consideration of the timing of the
27 control of some of the pollutants from these facilities,
28 particularly sulfur dioxides and nitrogen oxides that
29 each interact with ammonia and other substances in the
30 atmosphere;

31 (5) the development of energy policies to promote a
32 safe, sufficient, reliable, and affordable energy supply
33 on the state and national levels is being affected by the
34 on-going deregulation of the power generation industry

1 and the evolving energy markets;

2 (6) the Governor's formation of an Energy Cabinet
3 and the development of a State energy policy calls for
4 actions by the Agency and the Board that are in harmony
5 with the energy needs and policy of the State, while
6 protecting the public health and the environment;

7 (7) Illinois coal is an abundant resource and an
8 important component of Illinois' economy whose use should
9 be encouraged to the greatest extent possible consistent
10 with protecting the public health and the environment;

11 (8) renewable forms of energy should be promoted as
12 an important element of the energy and environmental
13 policies of the State and that it is a goal of the State
14 that at least 5% of the State's energy production and use
15 be derived from renewable forms of energy by 2010 and at
16 least 15% from renewable forms of energy by 2020;

17 (9) efforts on the state and federal levels are
18 underway to consider the multiple environmental
19 regulations affecting electric generating plants in order
20 to improve the ability of government and the affected
21 industry to engage in effective planning through the use
22 of multi-pollutant strategies; and

23 (10) these issues, taken together, call for a
24 comprehensive review of the impact of these facilities on
25 the public health, considering also the energy supply,
26 reliability, and costs, the role of renewable forms of
27 energy, and the developments in federal law and
28 regulations that may affect any state actions, prior to
29 making final decisions in Illinois.

30 (b) Taking into account the findings and declarations of
31 the General Assembly contained in subsection (a) of this
32 Section, the Agency shall, before September 30, 2004, but not
33 before September 30, 2003, issue to the House and Senate
34 Committees on Environment and Energy findings that address

1 the potential need for the control or reduction of emissions
2 from fossil fuel-fired electric generating plants, including
3 the following provisions:

4 (1) reduction of nitrogen oxide emissions, as
5 appropriate, with consideration of maximum annual
6 emissions rate limits or establishment of an emissions
7 trading program and with consideration of the
8 developments in federal law and regulations that may
9 affect any State action, prior to making final decisions
10 in Illinois;

11 (2) reduction of sulfur dioxide emissions, as
12 appropriate, with consideration of maximum annual
13 emissions rate limits or establishment of an emissions
14 trading program and with consideration of the
15 developments in federal law and regulations that may
16 affect any State action, prior to making final decisions
17 in Illinois;

18 (3) incentives to promote renewable sources of
19 energy consistent with item (8) of subsection (a) of
20 this Section;

21 (4) reduction of mercury as appropriate,
22 consideration of the availability of control technology,
23 industry practice requirements, or incentive programs, or
24 some combination of these approaches that are sufficient
25 to prevent unacceptable local impacts from individual
26 facilities and with consideration of the developments in
27 federal law and regulations that may affect any state
28 action, prior to making final decisions in Illinois; and

29 (5) establishment of a banking system, consistent
30 with the United States Department of Energy's voluntary
31 reporting system, for certifying credits for voluntary
32 offsets of emissions of greenhouse gases, as identified
33 by the United States Environmental Protection Agency, or
34 other voluntary reductions of greenhouse gases. Such

1 reduction efforts may include, but are not limited to,
2 carbon sequestration, technology-based control measures,
3 energy efficiency measures, and the use of renewable
4 energy sources.

5 The Agency shall consider the impact on the public
6 health, considering also energy supply, reliability and
7 costs, the role of renewable forms of energy, and
8 developments in federal law and regulations that may affect
9 any state actions, prior to making final decisions in
10 Illinois.

11 (c) Nothing in this Section is intended to or should be
12 interpreted in a manner to limit or restrict the authority of
13 the Illinois Environmental Protection Agency to propose, or
14 the Illinois Pollution Control Board to adopt, any
15 regulations applicable or that may become applicable to the
16 facilities covered by this Section that are required by
17 federal law.

18 (d) The Agency may file proposed rules with the Board to
19 effectuate its findings provided to the Senate Committee on
20 Environment and Energy and the House Committee on Environment
21 and Energy in accordance with subsection (b) of this Section.
22 Any such proposal shall not be submitted sooner than 90 days
23 after the issuance of the findings provided for in subsection
24 (b) of this Section. The Board shall take action on any such
25 proposal within one year of the Agency's filing of the
26 proposed rules.

27 (e) This Section shall apply only to those electrical
28 generating units that are subject to the provisions of
29 Subpart W of Part 217 of Title 35 of the Illinois
30 Administrative Code, as promulgated by the Illinois Pollution
31 Control Board on December 21, 2000.

1 Section 99. Effective date. This Act takes effect July
2 1, 2001.