

ILLINOIS POLLUTION CONTROL BOARD
March 22, 2018

IN THE MATTER OF:)
)
AMENDMENT TO 35 ILL. ADM. CODE) R18-22
205, EMISSIONS REDUCTION MARKET) (Rulemaking - Air)
SYSTEM)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by K. Papadimitriu):

On February 22, 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to amend Part 205 of the Board’s air pollution regulations, the Emissions Reduction Market System (ERMS). *See* 35 Ill. Adm. Code 205. Accompanying the proposal were documents including a Statement of Reasons (SR) and Technical Support Document. In this order, the Board accepts IEPA’s proposal for hearing. Without commenting on the substantive merits of IEPA’s proposal, the Board also directs its Clerk to submit the proposal to first-notice publication in the *Illinois Register*. The proposed rule appears in an addendum to this order.

PROPOSED ERMS “SUNSET”

ERMS is a cap-and-trade market program in which sources must hold allowances for actual emissions of volatile organic material (VOM). SR at 2. IEPA states that ERMS was intended to help attain the 1979 ozone National Ambient Air Quality Standards by reducing VOM emissions in the Chicago non-attainment area. The United States Environmental Protection Agency (USEPA) approved ERMS in 2001 as an element of Illinois’ State Implementation Plan (SIP). SR at 1, citing 66 Fed. Reg. 52343 (Oct. 15, 2001).

IEPA argues that, since it began implementing ERMS, emissions from ERMS sources have decreased. SR at 3. IEPA attributes these reductions to various causes. “Some of the affected sources have permanently shut down. New sources and emissions units that have become subject to ERMS do not emit at the rate of these older, shutdown sources. Additionally, several state and federal regulations addressing VOM emissions have been promulgated since ERMS began.” *Id.* at 3. IEPA reports that every year a “high percentage” of emission allowances expires unused. *Id.* at 4.

IEPA proposes to add a single rule, Section 205.115, which would establish a “sunset” date of April 30, 2018, for Part 205. SR at 4. IEPA states that, because ERMS no longer provides additional emission reductions or environmental benefit, a “sunset” will eliminate unnecessary regulation. *Id.* at 1, 4.

Because ERMS is an element of the SIP, IEPA must submit to USEPA any amendment to Part 205 adopted in this proceeding. SR at 5, citing 40 C.F.R. § 51.104. SIP revisions must undergo public notice and an opportunity for hearing before submission to USEPA for approval.

While the Board's notice provisions meet the federal requirements, IEPA supplied language for the Board to use. SR at 5-6. USEPA reviewed IEPA's proposal and "indicated that it is likely approvable as a SIP revision." SR at 6.

The Board finds that IEPA's proposal satisfies the content requirements of the Board's procedural rules. *See* 35 Ill. Adm. Code 102.202. The Board therefore accepts the proposal for hearing. The Board will hold at least two hearings on the proposal under Section 28 of the Environmental Protection Act (Act). 415 ILCS 5/28 (2016).

FIRST-NOTICE PUBLICATION AND COMMENT

Without commenting on the substantive merits of IEPA's proposal, the Board directs its Clerk to provide first-notice publication of the proposal in the *Illinois Register* under the Illinois Administrative Procedure Act (APA) (5 ILCS 100/5-40(b) (2016)).

Publication of the proposal in the *Illinois Register* begins a period of at least 45 days during which any person may file a public comment with the Board. Comments should include this rulemaking's docket number R18-22. Comments must be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website (www.ipcb.state.il.us). Questions about filing comments can be directed to the Clerk's Office at 312-814-3461.

ORDER

1. The Board accepts IEPA's proposal for hearing.
2. Without comment on the substantive merits of IEPA's proposal, the Board directs its Clerk to provide first-notice publication of the proposal in the *Illinois Register* under the APA. The proposed rule appears as an addendum to this order.
3. The Board directs the assigned hearing officer to proceed to hearing under the rulemaking provisions of the Act and the Board's procedural rules (415 ILCS 5/27, 28 (2016); 35 Ill. Adm. Code 102).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 22, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

Amendment to 35 Ill. Adm. Code 205, Emissions Reduction Market System (R18-22)
Addendum to Board Opinion and Order (Mar. 22, 2018)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: ALTERNATIVE REDUCTION PROGRAM

PART 205
EMISSIONS REDUCTION MARKET SYSTEM

SUBPART A: GENERAL PROVISIONS

Section	
205.100	Severability
205.110	Purpose
<u>205.115</u>	<u>Sunset Provision</u>
205.120	Abbreviations and Acronyms
205.130	Definitions
205.150	Emissions Management Periods

SUBPART B: APPLICABILITY

Section	
205.200	Participating Source
205.205	Exempt Source
205.210	New Participating Source
205.220	Insignificant Emission Units
205.225	Startup, Malfunction or Breakdown

SUBPART C: OPERATIONAL IMPLEMENTATION

Section	
205.300	Seasonal Emissions Component of the Annual Emissions Report
205.310	ERMS Applications
205.315	CAAPP Permits for ERMS Sources
205.316	Federally Enforceable State Operating Permits for ERMS Sources
205.318	Certification for Exempt CAAPP Sources
205.320	Baseline Emissions
205.330	Emissions Determination Methods
205.335	Sampling, Testing, Monitoring and Recordkeeping Practices
205.337	Changes in Emissions Determination Methods and Sampling, Testing, Monitoring and Recordkeeping Practices

SUBPART D: SEASONAL EMISSIONS MANAGEMENT

Section	
205.400	Seasonal Emissions Allotment
205.405	Exclusions from Further Reductions

205.410 Participating Source Shutdowns

SUBPART E: ALTERNATIVE ATU GENERATION

Section

205.500 Emissions Reduction Generator
205.510 Inter-Sector Transaction

SUBPART F: MARKET TRANSACTIONS

Section

205.600 ERMS Database
205.610 Application for Transaction Account
205.620 Account Officer
205.630 ATU Transaction Procedures

SUBPART G: PERFORMANCE ACCOUNTABILITY

Section

205.700 Compliance Accounting
205.710 Alternative Compliance Market Account (ACMA)
205.720 Emissions Excursion Compensation
205.730 Excursion Reporting
205.740 Enforcement Authority
205.750 Emergency Conditions
205.760 Market System Review Procedures

AUTHORITY: Implementing Section 9.8 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.8, 27 and 28].

SOURCE: Adopted at 21 Ill. Reg. 15777, effective November 27, 1997; amended in R05-11 at 29 Ill. Reg. 8848, effective June 13, 2005; amended in R18-22 at 42 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 205.115 Sunset Provision

The provisions of this Part shall not apply on and after April 30, 2018. Subject sources must comply with such provisions prior to April 30, 2018.

(Source: Added at 42 Ill. Reg. _____, effective _____)