

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: Don Brown	Tim Fox
Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500	100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **PRE-FILED TESTIMONY OF ALEC DAVIS CONCERNING PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE 205, EMISSIONS REDUCTION MARKET SYSTEM**, on behalf of the Illinois Environmental Regulatory Group, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: June 6, 2018

By: /s/ N. LaDonna Driver
N. LaDonna Driver

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PRE-FILED TESTIMONY OF ALEC DAVIS
CONCERNING PROPOSED AMENDMENTS TO
35 ILL. ADM. CODE 205, EMISSIONS REDUCTION MARKET SYSTEM

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HEPLERBROOM, LLC, and pursuant to 35 Ill. Adm. Code § 102.424 submits the following Pre-Filed Testimony of Alec Davis.

I am currently the Executive Director of the Illinois Environmental Regulatory Group, where I previously served as General Counsel. The Illinois Environmental Regulatory Group represents industries’ interests in developing and negotiating environmental regulations and laws in the State of Illinois. In my previous and current roles at IERG, I advocate on behalf of Illinois’ business community regarding environmental legislation and regulations. Before returning to the Illinois Environmental Regulatory Group, I was an attorney with the Illinois Farm Bureau’s Office of the General Counsel. In that capacity, I represented the interests of the Farm Bureau’s members on a wide-array of subjects, including environmental laws and regulations. Before my legal career, I worked for the Illinois State Geological Survey in Champaign. I hold Juris Doctorate and Bachelor of Sciences in Geology, both from the University of Illinois in Urbana-Champaign.

IERG strongly supports ending the ERMS program, for the same reasons that have been expressed by the Illinois Environmental Protection Agency (“Illinois EPA”). Several of IERG’s members are subject to ERMS. IERG members that are subject to ERMS have an obligation to

hold allotment trading units “ATUs” in an amount not less than the facility’s applicable seasonal VOM emissions. Such IERG members also have recordkeeping and reporting obligations under the ERMS requirements.

IERG supported the ERMS program at its inception, as an innovative and efficient approach to VOM emissions regulation. Two decades later, as the Illinois EPA has demonstrated in this rulemaking, the ERMS program is no longer providing environmental benefit, due to newer regulatory emission requirements, as well as facility shutdowns. Therefore, IERG supports the Illinois EPA’s efforts to end the ERMS obligations for the regulated community, as well as the Illinois EPA.

While IERG encourages the Board to approve Illinois EPA’s proposal here, IERG does have a concern about the sunset date. As stated by the Illinois EPA at hearing, Illinois EPA has not issued ATUs to regulated sources for the 2018 season. Transcript at p. 29. Illinois EPA further stated at hearing that if the rulemaking is approved as proposed, regulated sources would not have a regulatory obligation to hold ATUs for the 2018 season, complete required recordkeeping, or submit seasonal reports. Transcript at p. 30.

However, Illinois EPA acknowledged at hearing that regulated sources do have ERMS requirements in their Federally Enforceable State Operating Permits (“FESOP”) and Clean Air Act Permit Program (“CAAPP”) permits. Transcript at p. 28. Under both types of permits, sources must report deviations from permit requirements. Under CAAPP permits, sources must submit annual compliance certifications, which detail a source’s compliance or noncompliance with each CAAPP permit condition. Therefore, FESOP or CAAPP permittees who have ERMS requirements in such permits are required to report noncompliance with the permitted ERMS conditions.

Illinois EPA stated at hearing that it was not likely that the United States Environmental Protection Agency (“USEPA”) would approve the ERMS sunset as a State Implementation Plan (“SIP”) revision before the ERMS sources’ deadlines for holding ATUs and submitting seasonal reports in 2018. Transcript at pp. 30-33. When questioned at hearing as to the concern about ERMS permit requirements for 2018, Illinois EPA responded that without a regulatory requirement to enforce, a regulated source could apply for a permit modification. Transcript at p. 34.

Illinois EPA responded further to these concerns in its Response to the Illinois Pollution Control Board and the Illinois Environmental Regulatory Group’s Questions Regarding the Sunset of the Emissions Reduction Market’s System (“Response”), filed on May 17th, 2018.

Below is the relevant portion of that submittal:

3. ERG's representative asked several questions about how changes to the permits of applicable sources would be handled.

During the first hearing regarding the ERMS sunset rulemaking, held May 10, 2018, IERG asked the Agency several questions about how changes to the permits of applicable sources would be handled for the 2018 season and the time gap between when the State program sunsets and the Illinois SIP is revised. The Agency has confirmed internally that the responses given at the hearing were indeed correct, but the Agency would like to expand upon them.

Any source with a CAAPP permit that is concerned about having ERMS requirements in that permit can submit an application for Minor Modification to the Illinois EPA Bureau of Air Permit Section after the USEPA approves the change in Illinois' SIP. Similarly, any applicable source with a FESOP can apply to have ERMS requirements removed from its permit at that same point.

If the Agency's proposal is adopted by the Board, the ERMS requirements will no longer be effective at the State level; however, they will technically continue to be federally enforceable until the USEPA approves the sunset as a revision to the Illinois SIP. As stated at the hearing, it is extremely unlikely that the USEPA would attempt to enforce requirements under a program that the State of Illinois no longer operates and that the State is attempting to remove from its SIP. The USEPA understands that the gap of time between finalizing rulemakings at the

State level and approving SIP revisions at the federal level is a part of the SIP revision process.

Additionally, once the ERMS sunset provision is adopted by the Board, applicable sources submitting CAAPP annual certifications can explain in those certifications that the ERMS requirements are no longer applicable, and thus certify compliance with any ERMS requirements.

Illinois Environmental Protection Agency's Response to the Illinois Pollution Control Board and the Illinois Environmental Regulatory Group's Questions Regarding the Sunset of the Emissions Reduction Market's System, ¶ 3.

IERG appreciates the additional information Illinois EPA has provided on this point.

However, Illinois EPA's further explanation leaves IERG and its members who are subject to ERMS with lingering concerns because the ERMS requirements will still be enforceable as SIP requirements.

In its Response, Illinois EPA states that federal enforcement of the ERMS SIP or FESOP/CAAPP requirements is unlikely. Further, Illinois states in its Response that ERMS sources can explain in their CAAPP compliance certifications that "the ERMS requirements are no longer applicable" and "can certify compliance with any ERMS requirements."

IERG's members take their regulatory and permit compliance obligations very seriously. IERG appreciates the Illinois EPA's efforts to provide its perspective on these issues. Nevertheless, while IERG and its members strongly support the ERMS sunset, we must express our members' concerns about the possible noncompliance situation that is being created by the current proposal. IERG believes that this can be resolved by adjusting the timing of the sunset provision. IERG has discussed this possibility with Illinois EPA and has been informed that Illinois EPA does not support adjusting the sunset date. IERG therefore requests that the Board consider the following revision to the sunset provision:

Section 205.115 Sunset Provision

The provisions of this Part shall not apply on and after April 30, 2021 or the effective date of approval of this provision by the United States Environmental Protection Agency as a revision to the Illinois State Implementation Plan, whichever occurs first.

This revision will continue the ERMS program while allowing time for USEPA to approve the ERMS sunset as a SIP revision and for sources to secure revisions to their FESOPs and CAAPP permits to remove ERMS requirements. IERG respectfully requests that the Board consider this revision to the Illinois EPA's proposal in order to avoid noncompliance for IERG's members who are subject to ERMS.

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: June 6, 2018

By: /s/ N. LaDonna Driver
N. LaDonna Driver

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CERTIFICATE OF SERVICE

I, N. LaDonna Driver, the undersigned, on oath state the following:

That I have served the attached **PRE-FILED TESTIMONY OF ALEC DAVIS**
CONCERNING PROPOSED AMENDMENTS TO 35 ILL. ADM. CODE 205,
EMISSIONS REDUCTION MARKET SYSTEM, via electronic mail upon:

Don Brown
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That my email address is LaDonna.Driver@heplerbroom.com.

That the number of pages in the email transmission is 7.

That the email transmission took place before 5:00 p.m. on the date of June 6, 2018.

Date: June 6, 2018

/s/ N. LaDonna Driver
N. LaDonna Driver