

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1996

IN THE MATTER OF:)
)
EMISSION REDUCTION MARKET) R 97-13
SYSTEM ADOPTION OF 35 Ill. Adm. Code) (Rulemaking - Air)
205 and AMENDMENTS TO 35 Ill. Adm.)
Code 106)

ORDER OF THE BOARD (by J. Yi, K.M. Hennessey, and M. McFawn):

On October 7, 1996 the Illinois Environmental Protection Agency (Agency) filed this proposed rulemaking pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 102. (415 ILCS 5/27 and 5/28 (1994).) The proposal includes rules designed to implement Section 9.8 of the Act, which is titled Emissions Reductions Market System. (415 ILCS 5/9.8(1994).) Section 9.8 of the Act directs the Agency to design an emissions market system to meet the applicable post-1996 provisions of the Clean Air Act Amendments of 1990 (CAA). The proposed rule requires a reduction in volatile organic material (VOM) emissions of 12 percent from all subject sources by 1999, to meet this rate of progress (ROP) requirement for the stationary source sector. The proposal provides individual sources with a variety of options to meet this 12 percent reduction. First, a source may elect to comply by reducing VOM emissions within its facility. Second, the market aspects of the proposal allow sources greater flexibility by allowing a facility to forego reducing its emissions and to instead seek trading units in the market. Thus the proposal allows individual sources the opportunity to evaluate and utilize the most effective option for reducing emissions at the facility rather than prescribing a specific control option.

Along with the proposal the Agency also filed two motions one requesting the Board to waive certain filing requirements and the other for expedited review. The Agency is requesting the Board to waive the filing requirement concerning the number of copies which must be filed with the Board and the requirement to submit an entire proposal to the Illinois Attorney General (Attorney General) and the Department of Natural Resources (Department). (See 35 Ill. Adm. Code 102.120.) In support of its motion to file less than the required nine copies with the Board, the Agency states that the entire regulatory proposal will consist of approximately a thousand pages and “[g]iven the length of the proposal and the resources necessary to provide nine copies, the Illinois EPA requests that it be allowed to file the original and three complete copies of the proposal plus five partial copies, the latter consisting of pleadings and the proposed rule absent supporting documents.” The Agency asserts that on October 4, 1996, it discussed waiving the requirement of providing the entire proposal to the Attorney General with Mr. Matthew Dunn of the Attorney General’s Office, who agreed that the Agency did not need to provide an entire proposal and requested only that a copy of the Statement of Reasons and proposed regulations be provided. Finally, in support of granting its motion to waive the requirement that the proposal be served on the Department, the Agency states that on October 4, 1996, it discussed the matter with Mr. Bob Lieberman of the Department who agreed that the entire proposal need not be submitted to the Department,

provided that the Department be notified that a proposal has been made and where the proposal can be reviewed. The Board grants the motions to waive the above mentioned filing requirements.

The Agency is also requesting the Board for expedited review. The Agency states the following in support of its motion:

The proposed rule is a component of Illinois' plan to meet the three percent a year ROP requirement, delay in adopting this proposed rule will result in sanctions specified by the CAA. Section 179(a)(3)(A) of the CAA (42 U.S.C. §7509(a)(3)(A)) provides that a non-complying state may be subject to one of two available sanctions: the withholding of highway funds pursuant to Section 179(b)(1)(42 U.S.C. §7509(b)(1)) or the imposition of at least a 2:1 offset requirement on new and modified sources or emission units for which a permit is required under Part D of the CAA (42 U.S.C. §7509(b)(2))(nonattainment area new source review). However, should the Administrator of the United States Environmental Protection Agency ("USEPA") find the state lacking in good faith in working toward compliance, both sanctions shall apply until such time as the state achieves compliance. 42 U.S.C. §7509(a).

On July 10, 1996, USEPA published a finding that Illinois failed to submit the required state implementation plan revision requiring emission reductions of nine percent from the end of 1996 to 1999. 61 Fed. Reg. 36294, July 10, 1996. Pursuant to this notice, the sanctions described above will take effect 18 months from July 3, 1996, unless USEPA finds that the State has made a complete submittal within this period. To avoid sanctions for Illinois, it is necessary for the proposed rules to be fully adopted by the Board as expeditiously as possible to assure that USEPA has sufficient time to deem the submittal complete prior to the conclusion of this 18 month period.

The Board appreciates the Agency's urgency in the adoption of final rules in this matter so that the United States Environmental Protection Agency has sufficient time to review the final rules prior to the end of the 18 month period and will act accordingly to meet this timeline. Therefore the Board will grant the Agency's motion for expedited review consistent with our resources and the large number of deadline driven regulatory proceedings we are currently processing.

The Board finds that the Agency proposal meets the filing requirements of Sections 27 and 28 of the Act and the Board's procedural rules. Therefore we accept this matter for hearing. The hearing officer is directed to set this matter to hearing pursuant to this order, the requirements of the Act and the Board's procedural rules.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the _____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board