

ILLINOIS POLLUTION CONTROL BOARD

December 1, 1994

IN THE MATTER OF:)
)
ENHANCED VEHICLE INSPECTION AND) R94-20
MAINTENANCE (I/M) REGULATIONS) (Identical-in-Substance Rules)
AMENDMENTS 35 ILL. ADM. CODE)
240)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by G. Tanner Girard):

This matter is before the Board on a July 20, 1994 proposal filed by the Illinois Environmental Protection Agency (Agency). The Agency filed this proposal pursuant to Section 28.4(g) of the Environmental Protection Act (Act) [415 ILCS 5/28.4(g) (1992)] and Section 13B-20 of the Vehicle Emission Inspection Law of 1995 (VEIL) [625 ILCS 5/13B-20, as added by P.A. 88-533, effective January 18, 1994].

By this opinion and order the Board adopts amendments that pertain to a vehicle inspection and maintenance program for the Chicago and metropolitan East St. Louis areas of the state. The purpose is to aid the Illinois Environmental Protection Agency (Agency) in assembling an acceptable State Implementation Plan (SIP) for ozone for these two areas of the state for submission to the U.S. Environmental Protection Agency (U.S. EPA).

As discussed more fully below, this proceeding involves Board adoption of one segment of a set of regulations to provide for an enhanced vehicle emissions inspection and maintenance (I/M) program for Illinois. Another segment is involved in docket R94-19, which bears a nearly identical caption. This proceeding involves testing for emissions from on-board vehicle fuel evaporative emissions. R94-19 involves testing vehicle engine exhaust emissions. These two dockets represent the whole of the Board's rules of the enhanced I/M program. The Agency will independently implement other aspects of the program.

Sections 28.4(g) of the Act and 13B-20(a) of VEIL provide that Section 5 of the Administrative Procedure Act [5 ILCS 100/5-35 & 5-40 (1992)] and Title VII (Sections 26 through 29) of the Act do not apply to this proceeding. Thus, this proceeding was not subject to First Notice or Second Notice review by the Joint Committee on Administrative Rules. Rather, the Board caused a Notice of Proposed Amendments to Appear in the Illinois Register. After receiving public comments on the proposed amendments for a period of 45 days after that date of publication, the Board was free to proceed to adopt amendments based on the Agency's proposal. The Board delayed this final action for a short time in response to a request from the Agency that we adopt these

amendments simultaneously with the companion R94-19 amendments, which we are also adopting by a separate opinion and order today.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) [415 ILCS 5 (1992)]. The Board is charged therein to "determine, define and implement the environmental control standards applicable in the State of Illinois". More generally, the Board's rulemaking charge is based on the system of checks and balances integral to Illinois environmental governance: the Board bears responsibility for the rulemaking and principal adjudicatory functions; the Illinois Environmental Protection Agency is responsible for carrying out the principal administrative duties. The latter's duties include administering today's regulation.

Procedural Background

On July 20, 1994, the Agency filed this proposal for rulemaking. The Board accepted the proposal for hearing and adopted a proposal for public comment on July 21, 1994. A Notice of Proposed Amendments appeared in the Illinois Register on August 12, 1994, at 18 Ill. Reg. 12097.

The Board does not normally conduct public hearings in identical-in-substance proceedings, but we conducted a hearing in this matter on September 8, 1994. Since this proposal will ultimately result in a state implementation plan (SIP) revision, federal law requires that the state conduct a hearing. The Board conducted that hearing so that it coordinated with the hearings in docket R94-19; we held the two hearings at the same location and on the same morning. At that hearing, the Agency made statements in support of its program. No member of the public appeared to testify at that hearing.

The 45-day public comment period began August 12, 1994 and expired on September 25, 1994. The Board delayed adopting this proceeding at the suggestion of the Agency, so that we could adopt these amendments together with those involved in R94-19 for near-simultaneous filing with the Secretary of State.

During the public comment period, the Board received one public comment:

PC 1 received September 12, 1994, Office of the Secretary of State, Index Department, Administrative Code Division
(by Connie Bradway, dated September 6, 1994)

By PC 1, the Secretary of State suggested a correction to the questionnaire that would appear in the Notice of Adopted Amendments. The Secretary of State did not suggest any changes to the text of the amendments themselves.

In addition to PC 1, the Board also received suggestions for revisions from staff of the Joint Committee on Administrative Rules (JCAR). In response to the JCAR suggestions, the Board added a reference to the authority note for Part 240 to reference Section 13B-20 of the Vehicle Emissions Inspection Law of 1995 [625 ILCS 5/13B-20] and added Board Notes to Sections 240.172 and 240.173, indicating the federal regulatory sources for these provisions: 40 CFR 51.357(b)(3)(i) and (b)(3)(ii), respectively.

Regulatory Background

Section 182(b) and (c) of the Clean Air Act (CAA), as amended in 1990, requires the use of "inspection and maintenance" programs in areas not meeting the national ambient air quality standards (NAAQS) for ozone and/or carbon monoxide. The CAA specifies the use of "basic" I/M programs in "moderate" nonattainment areas and "marginal" nonattainment areas with existing I/M programs. It requires the use of "enhanced" I/M programs in "serious", "severe", and "extreme" ozone nonattainment areas with urbanized populations of 200,000 or more. In Illinois, the Chicago and Metro-East St. Louis (Metro-East) areas are classified as "severe" and "moderate" nonattainment for ozone, respectively, and as such are subject to the I/M requirement.

The General Assembly enacted VEIL. That statute provides authority for the Agency to implement an enhanced I/M program and meet the United States Environmental Protection Agency's (U.S. EPA's) requirements for such a program. VEIL mandates enhanced I/M testing for the Metro-East area and certain portions of the Chicago nonattainment area.

Section 13B-20 of VEIL, mandates adoption of enhanced I/M rules by the identical-in-substance rulemaking procedure. The Agency has proposed codified U.S. EPA emissions standards concerning evaporative system pressure and purge testing for the enhanced I/M program in this docket by identical-in-substance procedures under Section 28.4 of the Act. Pursuant to the provisions of that Section, the Board was required to adopt regulations that are identical in substance to federal regulations that the state must adopt to comply with the 1990 CAA amendments.

However, major portions of the federal enhanced I/M scheme are not codified in federal regulations, but exist only as federal guidance. Section 7.2 of the Act, which defines "identical-in-substance" rulemaking and establishes conditions for its use, allows the Board only to adopt federal rules using this mechanism.

The Agency accordingly chose to use the next-fastest procedural mechanism, the Section 28.5 "fast-track" rulemaking

(P.A. 87-1213, effective September 26, 1992; 415 ILCS 5/28.5), for those segments of the enhanced I/M rules that were based on federal guidelines, as that rulemaking also implements the CAA. The Board designated that companion docket as R94-19, with a nearly identical caption.

The Agency's proposals represented the procedural means by which the Agency sought to achieve the mobile source emissions standards necessary for the implementation of the enhanced I/M program. The standards proposed in R94-19 incorporate federal guidance. The Agency proposed codified U.S. EPA emissions standards concerning evaporative system pressure and purge testing for the enhanced I/M program in this docket by identical-in-substance procedures under Section 28.4 of the Act. In companion docket R94-19, the Agency proposed emissions standards based on U.S. EPA guidance.

The Board adopts the Agency-proposed amendments relating to standards for fuel evaporative emissions control system testing without substantive revision. The only revisions were the above-mentioned addition of a citation to VEIL in the authority note for Part 240 and the addition of a Board note to each of Sections 240.172 and 240.173, citing the federal sources of these provisions.

ORDER

The Board directs the Clerk to cause the filing of the following proposal for publication in the Illinois Register:

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE B: AIR POLLUTION
 CHAPTER I: POLLUTION CONTROL BOARD
 SUBCHAPTER k: EMISSION STANDARDS AND
 LIMITATIONS FOR MOBILE SOURCES

PART 240
 MOBILE SOURCES

SUBPART A: DEFINITIONS AND GENERAL PROVISIONS

Section	
240.101	Preamble
240.102	Definitions
240.103	Prohibitions
240.104	Inspection
240.105	Penalties
240.106	Determination of Violation
240.107	Incorporations by Reference

SUBPART B: EMISSIONS

Section
 240.121 Smoke Emissions
 240.122 Diesel Engine Emissions Standards for Locomotives
 240.123 Liquid Petroleum Gas Fuel Systems
 240.124 Vehicle Exhaust Emission Standards
 240.125 Compliance Determination

SUBPART C: HEAVY-DUTY DIESEL SMOKE
 OPACITY STANDARDS AND TEST PROCEDURES

Section
 240.140 Applicability
 240.141 Heavy-Duty Diesel Vehicle Smoke Opacity Standards and
 Test Procedures

SUBPART F: EVAPORATIVE TEST STANDARDS

Section
240.172 Evaporative System Pressure Test Standards
240.173 Evaporative System Purge Test Standards

240.Appendix A Rule into Section Table
 240.Appendix B Section into Rule Table

AUTHORITY: Implementing Sections 9, 10 and 13 and authorized by Sections 27 and 28.4 of the Environmental Protection Act ~~(Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1009, 1010, 1013 and 1027)~~ [415 ILCS 5/9, 10, 13, 27, and 28.4] and Section 13B-20 of the Vehicle Emissions Inspection Law of 1995 [625 ILCS 5/13B-20] (P.A. 88-533, effective January 18, 1994).

SOURCE: Adopted as Chapter 2: Air Pollution, Part VII: Mobile Sources, filed and effective April 14, 1972; codified at 7 Ill. Reg. 13628; amended in R85-25, at 10 Ill. Reg. 11277, effective June 16, 1986; amended in R90-20 at 16 Ill. Reg. 6184, effective April 7, 1992; amended in R94-20 at _____ Ill. Reg. _____, effective _____.

NOTE: Capitalization denotes statutory language.

SUBPART F: EVAPORATIVE TEST STANDARDS

Section 240.172 Evaporative System Pressure Test Standards

- a) The vehicles shall be inspected utilizing an evaporative system pressure test adopted by the Agency.
- b) The vehicle shall fail the evaporative system pressure test if one of the following occurs:

- 1) The system cannot maintain a system pressure above eight inches of water for up to two minutes after being pressurized to 14 plus or minus 0.5 inches of water;
- 2) No pressure drop is detected when the gas cap is loosened;
- 3) The fuel vapor storage canister is missing or obviously damaged;
- 4) System vapor lines or hoses are missing or obviously disconnected; or
- 5) The gas cap is missing.

BOARD NOTE: Derived from 40 CFR 51.357(b)(3)(i) (1993).

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

Section 240.173 Evaporative System Purge Test Standards

- a) The vehicle shall be inspected utilizing the evaporative system purge test adopted by the Agency.
- b) The vehicle shall fail the evaporative system purge test if the canister purge system flow as measured during the course of the transient exhaust emission test is less than one liter.

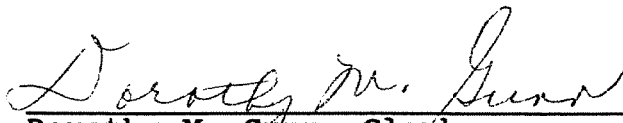
BOARD NOTE: Derived from 40 CFR 51.357(b)(3)(ii) (1993).

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

IT IS SO ORDERED

Board Member J. Yi abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of December, 1994, by a vote of 6-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board