

ILLINOIS POLLUTION CONTROL BOARD
October 11, 1990

IN THE MATTER OF:)
)
APPLICATION OF CALIFORNIA) R89-17(C)
MOTOR VEHICLE CONTROL PROGRAM) (Rulemaking)
IN ILLINOIS)

PROPOSED RULE. FIRST NOTICE.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on its own motion. On October 18, 1989, the Board opened this docket to gather information on whether Illinois should adopt the California motor vehicle control program. An inquiry hearing was held on December 12, 1989, and the Board accepted written public comments until January 5, 1990. On April 12, 1990, the Board proposed, for first notice, that portions of the California program be adopted in Illinois. That proposal, in subdockets (A) and (B), was published in the Illinois Register on May 11, 1990, at 14 Ill. Reg. 6977. On May 24, 1990, the Board directed the Department of Energy and Natural Resources (ENR) to prepare an economic impact study (ECIS) on the proposal. ENR filed its "Economic Impact Statement" on June 18, 1990. The Board accepted further public comments on the proposal until August 1, 1990. Today, after review of the record, the Board creates an additional subdocket (C), proposes an additional rulemaking option, and sends that additional proposal to first notice. The Board recognizes that its action in proposing an additional subdocket while still considering earlier proposals is unusual. However, the Board takes this course so as to facilitate full comment on, and analysis of, the issues involved in this rulemaking, and to build a full record in this proceeding.

BACKGROUND

California has historically had stricter emission controls for mobile sources than the rest of the country. The other 49 states are all subject to the same federal standard; in fact, the Clean Air Act (CAA) preempts the states from setting emission standards for new motor vehicles. 42 USC 7543(a). The CAA also provides for a waiver of that preemption for California's motor vehicle emissions standards, however, and allows other states to adopt the identical California standards. 42 USC 7507 and 7543(b). In other words, a state may choose between the federal standards and the California standards: no state can adopt a third standard. The test in deciding whether adoption of a proposed new standard complies with the CAA is whether auto manufacturers would be burdened with additional hardware requirements beyond the federal

and California standards, i.e. whether a third vehicle would have to be manufactured in order to comply with the proposed standard. The eight states which belong to the Northeast States for Coordinated Air Use Management (NESCAUM) have announced that they will seek to have the California standards adopted by their states,¹ and the individual NESCAUM states are proceeding through that adoption process. Only New York, which recently adopted the California motor vehicle program effective with 1993 model-year vehicles, has actually adopted California standards to date.

In early 1989 NESCAUM commissioned Sierra Research Inc. to assist in an analysis of the feasibility, the air quality benefits, and the costs of adopting the California motor vehicle control program in the northeast states. The report issued by Sierra concludes that the northeast could reduce motor vehicle emissions of HC by 16%, NOx by 27%, and CO by 39% by the year 2010, when the current generation of vehicles controlled at the federal standards is replaced by lower emitting vehicles. The Sierra report found that the cost of these reductions would be about \$150 per vehicle, or about \$600 per ton of HC and NOx removed. (Ex. 2A.) A graph prepared for the American Lung Association shows that reductions in Illinois for mobile sources could be approximately 27% for HC, 25% for CO, and 39% for NOx. (Ex. 3.)

Because of the requirements of the CAA discussed above, any adoption by Illinois of the California standards would have to be made identical to the California standards which are in effect at the time of adoption. The current federal and the 1993 California standards² are summarized below:

	HC	CO	NOx
Federal	0.41 T*	3.4	1.0
California (1993)	0.25 N**	3.4	0.4

(Standards are expressed in grams per mile.)

*T means total hydrocarbons.

**N means non-methane hydrocarbons only.

¹ The eight states which belong to NESCAUM are Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

² The current CAA requires the states to adopt standards at least two years before those standards are effective. 42 U.S.C. 7507. It is not clear whether the amendments to the CAA currently pending before the U.S. Congress would affect that provision in any way.

The California program also includes other provisions relating to production line testing, certification of conformity, nonconformance penalties, tampering, useful life, inspection and maintenance testing, on-board diagnostics, and recall.

The Board is aware that the United States Congress is currently considering various proposals to adopt the California standards as nationwide requirements, as a part of the current action on amending the CAA. Both the House of Representatives and the Senate passed bills which contained parts of the California 1993 program, although the two bills differ in several ways. The CAA amendments, including action on motor vehicle emission standards, are presently before a conference committee. Because of the uncertainties of when, and if, a bill will be agreed upon, what the bill will contain on the issue of motor vehicle emission standards, and whether the President will sign such a bill, the Board will proceed with first notice action in this new subdocket.

PRIOR BOARD PROPOSALS

As noted above, on April 12, 1990, this Board proposed that portions of the California motor vehicle control program be adopted in Illinois. The April 12 opinion and order contained two slightly different proposals. The docket (A) proposal includes regulations on testing, certification procedures, importation, and tailpipe and evaporative emission standards for 1993 and subsequent model year motor vehicles, motor vehicle engines, and aftermarket parts. The docket (B) proposal is identical, except that it does not contain the three-year phase-in provisions of docket (A). Those two proposals have been published for first notice, and the comment period has closed. The Board takes no further action on dockets (A) or (B) today, but those proposals still remain "alive". The Board intends to consider further action on this docket, including all subdocket proposals, after federal action (or inaction) on the pending CAA amendments occurs.³

TODAY'S REGULATORY PROPOSAL

Initially, please note that the proposal set forth today does not include adoption of the California program for heavy-duty vehicles. Heavy-duty vehicles are defined as those having a manufacturer's gross vehicle weight rating of greater than 8500 pounds. (See Section 241.101(b).) The proposals in dockets (A)

³ The Board notes that if no final action is taken on the pending CAA amendments during this Congress, that bill (S. 1630) will die and the next Congress would have to begin the process of amending the CAA from scratch. Therefore, the Board will know whether Congress and/or the President will act by the time the next U.S. Congress is seated, in January 1991.

and (B) also do not cover heavy duty vehicles. While the opinion in those subdockets stated that heavy duty vehicles are not included in the proposal, the actual language of those subdockets does not specifically exclude those vehicles. If the Board decides to proceed further with those subdockets, clarifying language will be added.

Docket (C) prohibits the sale, use, possession (for those in the business of selling, renting, or leasing new motor vehicles) or registration of any vehicle which does not conform with proposed Part 241. The emission standards, required diagnostic and malfunction systems, and warranty requirements are those "established by the State of California pursuant to Section 209 of the Clean Air Act." In essence, docket (C) would require the sale and registration of only those vehicles which comply with California standards in effect at the time of the manufacture of the individual vehicle. Docket (C) would become effective with 1993 model-year vehicles.

Subpart A is entitled "Purpose, Applicability, and Definitions". Section 241.100 "Purpose" states that the purpose of Part 241 to place controls on emissions from motor vehicles so as to reduce ozone levels, thus "restoring, maintaining, and enhancing the purity of the air of this state." (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1008.) Section 241.101 provides that this Part applies to all 1993 and subsequent model-year motor vehicles, motor vehicle engines, and air contaminant emission control systems offered for sale or sold for registration in Illinois. However, subsection (b) states that these rules do not apply to heavy-duty vehicles or to motor vehicle engines designed for installation in a heavy-duty vehicle. Section 241.102 contains definitions of terms used in the rules, and Section 241.103 is a severability clause.

Proposed Subpart B "Prohibitions" includes sections prohibiting the sale, use, or possession of vehicles which are not in compliance with this Part. Section 241.120 bars any person, dealer, or person who is engaged in the business of selling, renting, or leasing motor vehicles from selling, renting, or leasing a 1993 or subsequent model-year vehicle which does not conform with the emission standards, equipment requirements, and warranty provisions of the Part. Subsection (d) of that section requires a seller to certify to the purchaser, in writing, that the motor vehicle conforms with the requirements of the Part. Section 241.121 prohibits any person who is a resident of or operates an established place of business in Illinois from importing, delivering, purchasing, renting, leasing, acquiring, or receiving a 1993 or subsequent model-year motor vehicle for use, registration, or resale in Illinois unless the vehicle complies with this Part. Finally, proposed Section 241.122 precludes any person in Illinois who is in the business of selling, renting, or leasing motor vehicles or motor vehicle engines from importing,

receiving, or otherwise acquiring a 1993 or subsequent model-year vehicle or motor vehicle engine which is intended for use, registration, leasing or rental in Illinois unless that vehicle complies with this Part.

Subpart C contains exemptions, set forth in proposed Section 241.140, to these proposed rules. That section allows for replacement of vehicles which are damaged, become inoperative, or are stolen while an Illinois resident was out of state, and exempts vehicles transferred by inheritance, or transferred by a court decree of divorce, dissolution, or legal separation. (Subsections (a) and (b).) Subsection (b) also contains an exception for any vehicle sold after the effective date of this Part, if that vehicle was registered in Illinois before that effective date. Subsection (c) exempts vehicles owned by a rental vehicle company and registered in another state, if that vehicle is operated in Illinois only on a temporary basis. "Temporary basis" is defined as a period of 21 days or less. Finally, subsection (d) allows for bona fide moves to Illinois from another state.

Subpart D contains the standards which all vehicles regulated under this Part must meet. Section 241.160 provides that all 1993 and subsequent model-year motor vehicles registered in Illinois, as well as motor vehicle engines, must meet the emission standards established by the State of California pursuant to Section 209 of the CAA (42 U.S.C. 7543) and effective at the time of the motor vehicle's manufacture. Proposed Sections 241.161 and 241.162 require that 1993 and subsequent model-year motor vehicles registered in Illinois, and motor vehicle engines, also meet the malfunction and diagnostic system requirements and warranty provisions established by the State of California. In sum, only those motor vehicles and motor vehicle engines which comply with the California standards in effect at the time of the manufacture of the vehicle or engine could be registered in Illinois. By tying the Illinois standards directly to the manufacture of vehicles which meet the California standards, Illinois will avoid the rule updating process which would otherwise be required, since California updates its regulations very frequently. In this manner, Illinois citizens will be assured of the most up-to-date, least polluting cars available.

CONCLUSION

The Board's goal in proposing these separate subdockets for first notice and subsequent consideration is to raise several legal issues for comment, and to explore the best way for Illinois to improve air quality by controlling emissions from mobile sources. The opinion proposing subdockets (A) and (B), issued on April 12, 1990, contained several issues upon which the Board requested comment. Likewise, the Board requests comment on several issues raised by today's proposal. First, the Board recognizes that its proposal to require the sale, use, and registration in Illinois of

only those motor vehicles manufactured to California standards, whatever those standards may be at the time of the vehicle's manufacture, represents a departure from past practice. The Board requests comment and analysis on the legality and practicality of such action. Second, the Board will explore the option of making the rules in subdocket (C) effective with 1992 model-year vehicles, rather than waiting until 1993. If the Board were to take that action, the rules would become effective in Illinois almost immediately after final adoption. The Board requests full comment on this possibility, including discussion of the environmental benefits and technical feasibility of a 1992 effective date, as opposed to a 1993 effective date. Of course, the Board also requests comment on all other aspects of today's proposal.

ORDER

The Board hereby directs the Clerk of the Board to cause publication in the Illinois Register of the first notice of the following proposed regulations, contained in docket (C):

PART 241 EMISSION STANDARDS FOR MOTOR VEHICLES AND MOTOR VEHICLE ENGINES

SUBPART A: PURPOSE, APPLICABILITY, AND DEFINITIONS

Section 241.100 Purpose

The General Assembly of the State of Illinois has found that Illinois should RESTORE, MAINTAIN, AND ENHANCE THE PURITY OF THE AIR OF THIS STATE IN ORDER TO PROTECT HEALTH, WELFARE, PROPERTY, AND THE QUALITY OF LIFE. One threat to good air quality in the State is the formation of ozone. Mobile sources are the largest source of carbon monoxide and hydrocarbon emissions, and significant sources of nitrogen oxide emissions, all of which contribute to the formation of ozone. It is the purpose of this Part to place controls on emissions from motor vehicles so as to reduce ozone levels, thus RESTORING, MAINTAINING, AND ENHANCING THE PURITY OF THE AIR OF THIS STATE. (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1008.)

Section 241.101 Applicability

- a) This Part shall apply to all 1993 and subsequent model-year motor vehicles, motor vehicle engines, and air contaminant emission control systems offered for sale, or sold, for registration in this state.
- b) Notwithstanding subsection (a), this Part does not apply to any motor vehicle having a manufacturer's gross vehicle weight rating of greater than 8500 pounds, or to

any motor vehicle engine designed for installation in such vehicle.

Section 241.102 Definitions

The definitions of the Environmental Protection Act (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1001 et seq.) apply to this Part. The following definitions also apply to this Part:

"Act" means the Environmental Protection Act (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1001 et seq.)

"Air contaminant emission control system" means equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

"Dealer" means a person registered as a dealer under the Illinois Vehicle Code (Ill.Rev.Stat. 1989, ch. 95 1/2, pars. 5-101 and 5-102).

"Model year" means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Motor vehicle" is a vehicle which is self-propelled.

"New motor vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

"Sale" means the transfer of title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser, or the lease or rental of a new motor vehicle to a person.

"Used motor vehicle" means any motor vehicle which is not a new motor vehicle.

"Vehicle" means a device by which any person or property may be propelled, moved, or drawn

upon a highway, except a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

Section 241.103 Severability

Each Section of this Part shall be deemed severable, and in the event that any Section of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

SUBPART B: PROHIBITIONS

Section 241.120 Prohibitions Against Sale

- a) No dealer shall sell a 1993 or subsequent model year new or used motor vehicle which is not in compliance with this Part, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, sold exclusively for off-highway use, or sold for registration and use out of state.
- b) No person shall sell, offer or deliver for sale, to the ultimate purchaser or to any subsequent purchaser a 1993 or subsequent model year new or used motor vehicle for registration in this state, which is not in compliance with the rules and regulations as adopted in this Part on emission control standards and emission control systems and devices.
- c) No person who is engaged in this state in the business of selling to an ultimate purchaser or renting or leasing motor vehicles or motor vehicle engines (including but not limited to, manufacturers, distributors, and dealers), shall sell, or offer to sell, to an ultimate purchaser who is a resident of or doing business in this state, or lease, offer to lease, rent, or offer to rent, in this state a 1993 or subsequent model year motor vehicle, motor vehicle engine, or vehicle with a new motor vehicle engine, which is intended primarily for use in or for registration in this state, unless that vehicle is in compliance with the Act and this Part.
- d) Prior to or at the time of delivery or sale, the seller shall certify to the purchaser, in writing, that the motor vehicle conforms with the requirements of this Part.

Section 241.121 Prohibition Against Use

- a) No person who is a resident of or who operates an established place of business within this state shall import, deliver, purchase, rent, lease, acquire, or

receive a 1993 or subsequent model year motor vehicle, motor vehicle engine, or motor vehicle with a new motor vehicle engine for use, registration, or resale in this state unless such motor vehicle engine or motor vehicle is in compliance with the Act and this Part.

- b) "Established place of business", as used in this Section, means a place actually occupied either continuously or at regular periods.

Section 241.122 Prohibition Against Possession

No person who is engaged in this state in the business of selling to an ultimate purchaser, or renting or leasing motor vehicles or motor vehicle engines (including, but not limited to, manufacturers, distributors, and dealers), shall import, deliver, purchase, receive, or otherwise acquire a 1993 or subsequent model year motor vehicle, motor vehicle engine, or vehicle with a new motor vehicle engine which is intended for use primarily in this state, for sale or resale to an ultimate purchaser who is a resident of or doing business in this state, or for registration, leasing or rental in this state, unless that vehicle or engine is in compliance with this Part.

SUBPART C: EXEMPTIONS

Section 241.140 Exemptions

- a) This Part does not apply to a vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was damaged or became inoperative or was stolen.
- b) This Part shall not apply to a vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction, or to any vehicle sold after the effective date of this Part if the vehicle was registered in this state before such effective date.
- c) This Part does not apply to vehicles owned by a rental vehicle company and registered in another state, if such vehicle is operated in Illinois on a temporary basis. "Temporary basis" means a period of 21 days or less.
- d) This Part does not apply to any motor vehicle having a certificate of conformity issued pursuant to the Clean

Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in Illinois.

SUBPART D: STANDARDS

Section 241.160 Emission Standards

All 1993 and subsequent model-year motor vehicles registered in Illinois shall meet the emission standards established by the State of California pursuant to Section 209 of the Clean Air Act (42 USC 7543) and effective at the time of the motor vehicle's manufacture.

Section 241.161 Malfunction and Diagnostic Systems

All 1993 and subsequent model-year motor vehicles registered in Illinois shall meet the malfunction and diagnostic system requirements established by the State of California pursuant to Section 209 of the Clean Air Act (42 USC 7543) and effective at the time of the motor vehicle's manufacture.


Section 241.162 Warranty Provisions

All 1993 and subsequent model year motor vehicles registered in Illinois shall meet the warranty provisions established by the State of California pursuant to Section 209 of the Clean Air Act (42 USC 7543) and effective at the time of the motor vehicle's manufacture.

IT IS SO ORDERED.

J.D. Dumelle was not present.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 11th day of October, 1990, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board