

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1997

IN THE MATTER OF:)
)
CLEAN FUEL FLEET PROGRAM:) R98-8
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Air)
241)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On July 7, 1997, the Illinois Environmental Protection Agency (Agency) filed this proposal for rulemaking to amend 35 Ill. Adm. Code 241 (Clean Fuel Fleet Program (CFFP)). The Board adopted the CFFP on September 7, 1995. See In the Matter of: Clean Fuel Fleet Program: 35 Ill. Adm. Code 241 (September 7, 1995), R95-12. Sections 182(c)(4)(A) and Section 246 of the Clean Air Act (CAA) (42 U.S.C. 7511(c)(4)(A) and 7586 (1990)), require all serious, severe, and extreme ozone nonattainment areas (NAA) to adopt a CFFP by May 15, 1994. In Illinois, the Chicago area is classified as a severe NAA and is subject to the CFFP. The attainment year for the Chicago area is 2007. Pursuant to CFFP, if certain fleet owners acquire new motor vehicles, beginning model year 1998 and thereafter, a specified percentage of these new motor vehicles must be clean fuel fleet vehicles (CFFVs) which meet the federal low emission standards established by the United States Environmental Protection Agency for the CFFP. The proposal filed by the Agency requests the Board to amend certain sections of the CFFP to reflect that owners and operators will have an additional year to meet the requirements of the CFFP and to correct certain amounts of credit given for over-compliance.

This proposal was filed pursuant to Section 28.5 of the Environmental Protection Act (Act). 415 ILCS 5/28.5 (1996). Pursuant to the provisions of that section the Board is required to proceed within set timeframes toward the adoption of the regulation. The Board has no discretion to adjust these timeframes under any circumstances. Today the Board acts to send this proposal to first notice under the Illinois Administrative Procedure Act without commenting on the merits of the proposal. The following schedule indicates the deadlines by which the Board must act as provided in Section 28.5 of the Act:

First Notice	on or before July 21, 1997
First Hearing	on or before August 29, 1997
Second Hearing	on or before September 28, 1997
Third Hearing	on or before October 12, 1997
Second Notice	
(if 3rd hearing canceled)	on or before November 14, 1997
(if 3rd hearing held)	on or before December 4, 1997

Final Adoption of Filing 21 days after receipt of JCAR
certification of no objection

The Board notes that the above dates are the deadlines as established by Section 28.5 and do not represent actual hearing dates or filing dates. While the schedule includes a second and third hearing, these hearings may be canceled if unnecessary. The Board will proceed in this matter as prescribed in Section 28.5 and discussed in the Board's resolution. See RES 92-2 (October 29, 1992, and December 3, 1992).

The Agency has filed a "Motion for Waiver of Certain Requirements" with the proposal. The Agency requests waiver of the following requirements: Section 28.5(e)(6) of the Act which requires the filing of technical support documentation; Section 28.5(g) of the Act which requires the Agency to prefile testimony; 35 Ill. Adm. Code 102.121(d) which requires the Agency file a synopsis of the testimony; and 35 Ill. Adm. Code 101.121(f) which requires the Agency to provide all documents that it will rely on at hearing.

In support of its motion to waive the requirements of Section 28.5(e)(6) of the Act, the Agency states that the proposed amendments and corrections are being made pursuant to Federal Guidance and a Federal Register and entail no change to the original technical basis provided in Clean Fuel Fleet Program (September 7, 1995), R95-12. The Agency asserts that the Statement of Reasons filed with this proposal fully explains the proposed amendments and states that to file a Technical Support Document would be duplicative. The Board denies the Agency's motion to waive the requirements of Section 28.5(e)(6) of the Act. The Board is without authority to waive a requirement of the Act without being granted the authority pursuant to the Act. However, the Board will incorporate the summary of the economic and technical support data relied upon in R95-12 since the original technical data remains unchanged.

The Agency also argues that the requirements of Section 28.5(g) of the Act and 35 Ill. Adm. Code 102.121(d) should be waived because this rulemaking merely extends the compliance date and makes corrections to two credit values based on Federal Guidance and a Federal Register, 61 Fed. Reg. 122 (1996). The Agency asserts that the Statement of Reasons supplied with the proposal fully explains the proposed amendments. The Agency states further that the Agency witnesses will be available at hearing for questioning. Unlike Section 28.5(e)(6) of the Act, Section 28.5(g) specifically allows the Board to waive the requirement that participants must file written testimony within 10 days of the hearing for good cause. 415 ILCS 5/28.5(g) (1996). However, the Board finds that the Agency cannot rely solely on the Statement of Reasons and must provide testimony in support of its proposal and the Statement of Reasons. Therefore, we deny the Agency's motion to waive the requirements of Section 28.5(g) of the Act and 35 Ill. Adm. Code 102.121(d). Additionally, the Board notes that it does not believe that the waiver in Section 28.5(g) goes to the requirement of presenting testimony but instead to the timing of the filing of the testimony.

In support of its motion to waive the requirements of 35 Ill. Adm. Code 101.121(f), the Agency argues that the two documents (the Clean Air Act, as amended in 1990 and the

opinion and order of Clean Fuel Fleet Program (September 7, 1995), R95-12) that it has relied upon which have not been submitted with the proposal are readily available. The Board agrees with the Agency and grants the Agency's motion to waive.

ORDER

The Board directs the Clerk to cause publication of the proposed amendments in the Illinois Register for first notice:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER II: POLLUTION CONTROL BOARD

PART 241
CLEAN FUEL FLEET PROGRAM

SUBPART A: GENERAL PROVISIONS

Section	
241.101	Other Definitions
241.102	Definitions
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SUBPART B: GENERAL REQUIREMENTS

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241.110	Applicability
241.111	Exemptions
241.112	Registration of Fleet Owners or Operators
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SUBPART C: CREDITS

Section	
241.130	Clean Fuel Fleet Credit Program
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SUBPART D: RECORDKEEPING AND REPORTING

Section	
241.140	Reporting Requirements
241.141	Recordkeeping Requirements

241.142 Report of Credit Activities

APPENDIX A Emission Standards for Clean Fuel Vehicles

TABLE A Low Emission Vehicle (LEV) Standards for Light-Duty Clean Fuel Vehicles (g/mi)

TABLE B Ultra-Low Emission Vehicle (ULEV) Standards for Light-Duty Clean Fuel Vehicles (g/mi)

TABLE C NMOG Standards for Flexible-Fueled and Dual-Fueled Vehicles

TABLE D Emission Standards for Model Year 1998 and Later Heavy-Duty Vehicles (g/bhp-hr)

APPENDIX B Credit Values

TABLE A Credit Generation: Acquiring a Light-Duty Clean Fuel Vehicle before MY ~~1998~~1999 or Acquiring More Light-Duty Clean Fuel Vehicles than Required

TABLE B Credit Generation: Acquiring Light-Duty ULEV or ZEV Clean Fuel Vehicles

TABLE C Credits Needed in Lieu of Acquiring a Light-Duty LEV

TABLE D Credit Generation: Acquiring a Heavy-Duty Clean Fuel Vehicle before MY ~~1998~~1999 or Acquiring More Heavy-Duty Clean Fuel Vehicles than Required

TABLE E: Credit Generation: Acquiring Heavy-Duty ULEV or ZEV Clean Fuel Vehicles

TABLE F: Credits Needed in Lieu of Acquiring a Heavy-Duty LEV

AUTHORITY: Implementing Sections 9, 9.1, and 10 and authorized by Sections 27 and 28.5 of the Environmental Protection Act (415 ILCS 5/9, 9.1, 10, 27, and 28.5).

SOURCE: Adopted at R95-12 at 19 Ill. Reg. 13265, effective September 11, 1995; amended in R97-____, at ____ Ill. Reg. _____, effective _____.

SUBPART B: GENERAL REQUIREMENTS

Section 241.113 Control Requirements

- a) Any covered fleet owner or operator who acquires one or more new covered fleet vehicles in a model year must meet the emission standards in subsection (e) of this Section for the following percentages of new covered fleet vehicle acquisitions:
 - 1) The portion of the acquisition of light-duty new covered fleet vehicles that must be light-duty clean fuel vehicles in any model year (MY) are as follows:
 - A) In MY ~~1998~~1999, at least 30 percent;
 - B) In MY ~~1999~~2000, at least 50 percent; and
 - C) In MY ~~2000~~2001 and every MY thereafter, at least 70 percent.

- 2) The portion of the acquisition of heavy-duty new covered fleet vehicles that must be heavy-duty clean fuel vehicles shall be 50 percent of the total number of heavy-duty new covered fleet vehicles acquired in each model year, commencing in MY ~~1998~~1999 and thereafter.
- b) Any fraction of a new clean fuel vehicle acquisition requirement resulting from the percentage calculation in subsection (a)(1) or (a)(2) of this Section may be carried over and added to the new clean fuel vehicle acquisition requirement in the next model year for that type of clean fuel vehicle (i.e. LDV and LDT, or HDV) in which an acquisition of such a clean fuel vehicle is required pursuant to subsection (a) of this Section.
 - c) An owner's or operator's light-duty and heavy-duty clean fuel vehicle acquisition requirements in a given model year shall be the number of clean fuel vehicles calculated in subsections (a)(1) and (a)(2) of this Section plus any fraction of the same category and weight class (i.e., LDV/LDT or HDV) of motor vehicle acquisition requirements carried over from a preceding year.
 - d) Notwithstanding subsections (b) and (c) of this Section, in any model year no owner or operator shall:
 - 1) Fall short of the acquisition requirements for new LDV/LDT or HDV clean fuel vehicles by an amount equal to or greater than one motor vehicle unit;
 - 2) Meet the acquisition requirements for clean fuel LDVs or LDTs through acquisition of clean fuel HDVs; or
 - 3) Meet the acquisition requirements for clean fuel HDVs through the acquisition of clean fuel LDVs or LDTs.
 - e) Motor vehicles acquired to meet the requirements of subsection (a) of this Section or Subpart C of this Part must be certified by USEPA to meet the federal emission certification standards of either LEV, ULEV, ZEV, or ILEV for a clean alternative fuel(s), as set forth in Appendix A of this Part and in 40 CFR Part 88, incorporated by reference in Section 241.104 of this Part.
 - f) The owner or operator must meet the acquisition requirements of subsection (a) of this Section by acquiring clean fuel vehicles or redeeming credits equal to or greater than the number of vehicle units calculated in accordance with subsection (a) of this Section through one or more of the following:
 - 1) Purchase or lease clean fuel vehicles certified by USEPA to meet any of the LEV, ULEV, ZEV, or ILEV standards referenced in subsection (e) of this Section;

- 2) Conversion of existing or new motor vehicles to meet a LEV, ULEV, ZEV or ILEV standard specified in subsection (e) of this Section, consistent with the requirements of Section 241.114 of this Subpart; or
- 3) Redeem credits generated or acquired consistent with the requirements of Subpart C of this Part.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

SUBPART C: CREDITS

Section 241.130 Clean Fuel Fleet Credit Program

- a) Any owner or operator of ten or more fleet vehicles located or primarily operated in the covered area may participate in the clean fuel fleet credit program, provided that the owner or operator requests that the Agency establish a clean fuel fleet credit account and complies with the registration, operating, emission standards, and recordkeeping and reporting requirements of Sections 241.112, 241.113(e), 241.115, and 241.142 of this Part, respectively, and the requirements of this Subpart and, if the vehicle for which credit is being claimed is converted, complies with the requirements of Section 241.114 of this Part.
- b) Any owner or operator of a fleet may earn credits by:
 - 1) Acquiring more clean fuel vehicles or fractions of clean fuel vehicles than required in any MY pursuant to Section 241.113 of this Part;
 - 2) Acquiring clean fuel vehicles that meet the ULEV or ZEV standard;
 - 3) Acquiring clean fuel vehicles which belong to a category of motor vehicles that are otherwise exempt under Section 241.111 of this Part; and
 - 4) Acquiring clean fuel vehicles before September 1, ~~1997~~1998, if the requirements of Section 241.112 of this Part have been met.
- c) Credits will be generated, redeemed, or traded after the owner or operator submits the information listed in Sections 241.140(a) and (b) of this Part to the Agency for each clean fuel vehicle involved in the credit transaction, requests that a credit transaction be posted and states the number of credits added to and subtracted from the credit accounts, and the Agency has received and reviewed the submittal. Credit transactions must be authorized by the owner or operator whose account is being reduced. The Agency will review, and add to and

subtract from credit accounts, according to the criteria of this Subpart and Appendix B of this Part.

- d) Credits shall be designated by the Agency at the time of issuance as either LDV/LDT credits or HDV credits. LDV/LDT credits may not be exchanged for HDV credits and HDV credits may not be exchanged for LDV/LDT credits.
- e) Notwithstanding subsection (b) of this Section, if a clean fuel vehicle has ever been used to demonstrate compliance under Subpart B of this Part, or used to generate credits under this Subpart, such clean fuel vehicle may never be used by any other person for the purpose of generating credits under this Subpart.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

SUBPART D: RECORDKEEPING AND REPORTING

Section 241.140 Reporting Requirements

By November 1, ~~1998~~1999, and by November 1 every year thereafter, the owner or operator of a covered fleet must submit the following information about its activities during the prior model year to the Agency:

- a) For each motor vehicle newly acquired or being used to earn credits, which also includes motor vehicles converted to clean fuel vehicles:
 - 1) The make, model, and year of manufacture;
 - 2) The date of vehicle acquisition;
 - 3) The vehicle identification number (VIN);
 - 4) The GVWR, as specified by the manufacturer;
 - 5) If the motor vehicle is being used to earn credits, the LVW for LDTs whose GVWR is less than or equal to 6,000 lbs and the ALVW for LDTs whose GVWR is greater than 6,000 lbs;
 - 6) The license plate number and state registered in; and
 - 7) A statement of whether the motor vehicle is exempt pursuant to Section 241.111 of this Part and which exemption applies.
- b) For each clean fuel vehicle newly acquired or being used to earn credits, which also includes motor vehicles converted to clean fuel vehicles:

- 1) The low emission standard(s) to which the motor vehicle is certified by USEPA, consistent with Section 241.113(e) of this Part;
 - 2) The clean alternative fuel(s) to which the motor vehicle is certified to operate by the manufacturer in order to meet the federal low emission standard(s) in Section 241.113(e) of this Part;
 - 3) The 8-character alpha numeric bar-coded vehicle emission configuration number; and
 - 4) For motor vehicles converted to clean fuel vehicles pursuant to Section 241.114 of this Part:
 - A) The date the motor vehicle was converted;
 - B) The name and address of the person(s) or firm performing the conversion; and
 - C) A statement that, to the best of the owner's or operator's knowledge, the motor vehicle was converted in accordance with the applicable requirements of 40 CFR Part 88, incorporated by reference in Section 241.104 of this Part.
- c) In addition to the information required in subsections (a) and (b) of this Section, the owner or operator must state:
- 1) The number, to the nearest tenth, of clean fuel vehicles the owner or operator was required to acquire pursuant to Section 241.113 of this Part;
 - 2) How that obligation was met;
 - 3) If any of the clean fuel vehicles in the fleet used for compliance or credits in the last two model years are no longer part of the fleet, the VIN and the date the clean fuel vehicle was transferred or taken out of service; and
 - 4) If the fleet vehicles are centrally fueled at a location that is owned, operated or controlled by the covered fleet owner or operator, the amount of bulk fuel purchased by type of fuel.
- d) All reports to the Agency must include the owner's or operator's fleet registration number, the name of the operation, and the signature of the owner or operator.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 241.APPENDIX B

Credit Values

Table A Credit Generation: Acquiring a Light-Duty Clean Fuel Vehicle before MY ~~1998~~1999 or Acquiring More Light-Duty Clean Fuel Vehicles than Required

TYPE	LDV, LDT #6000 GVWR #3750 LVW	LDT # 6000 GVWR > 3750 LVW # 5750 LVW	LDT > 6000 GVWR #3750 ALVW	LDT > 6000 GVWR > 3750 ALVW #5750 ALVW	LDT > 6000 GVWR > 5750 ALVW
LEV	1.00	1.26	0.71	0.91	1.11
ULE V	1.20	1.54	1.00	1.29 <u>1.26</u>	1.47 <u>1.56</u>
ZEV	1.43	1.83	1.43	1.83	2.23

TABLE B Credit Generation: Acquiring Light-Duty ULEV or ZEV Clean Fuel Vehicles

TYPE	LDV, LDT #6000 GVWR #3750 LVW	LDT # 6000 GVWR > 3750 LVW # 5750 LVW	LDT > 6000 GVWR #3750 ALVW	LDT > 6000 GVWR > 3750 ALVW #5750 ALVW	LDT > 6000 GVWR > 5750 ALVW
ULE V	0.20	0.29	0.29	0.34	0.45
ZEV	0.43	0.57	0.71	0.91	1.11

TABLE C Credits Needed in Lieu of Acquiring a Light-Duty LEV

TYPE	LDV, LDT #6000 GVWR #3750 LVW	LDT # 6000 GVWR > 3750 LVW # 5750 LVW	LDT > 6000 GVWR #3750 ALVW	LDT > 6000 GVWR > 3750 ALVW #5750 ALVW	LDT > 6000 GVWR > 5750 ALVW
LEV	1.00	1.26	0.71	0.91	1.11

TABLE D Credit Generation: Acquiring a Heavy-Duty Clean Fuel Vehicle before MY

~~1998~~1999 or Acquiring More Heavy-Duty Clean Fuel Vehicles than Required

VEHICLE TYPE	HDV
LEV	1.00
	1.87
ZEV	

TABLE E Credit Generation: Acquiring Heavy-Duty ULEV or ZEV Clean Fuel Vehicles

	HDV
ULEV	
ZEV	2.53

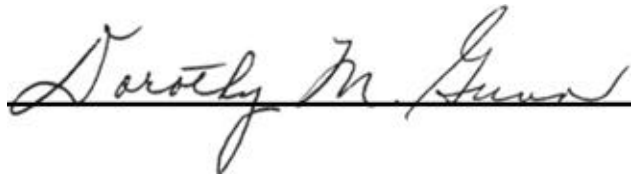
TABLE F Credits Needed in Lieu of Acquiring a Heavy-Duty LEV

VEHICLE TYPE	HDV
LEV	1.00

(Source: Amended at ___ Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 10th day of July 1997, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board