

ILLINOIS POLLUTION CONTROL BOARD  
August 23, 2018

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

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by K. Papadimitriu):

The Illinois Environmental Protection Agency (IEPA or Agency) proposed that the Board “sunset” the Emissions Reduction Market System (ERMS) on April 30, 2018. IEPA believes that ERMS no longer provides additional emission reductions or environmental benefit. The Board submitted IEPA’s proposal to first-notice publication without commenting on its substantive merits (42 Ill. Reg. 6572-76 (Apr. 13, 2018)) and conducted two hearings on the proposal. Today the Board submits the proposed “sunset” on April 30, 2018, to second-notice review by the Joint Committee on Administrative Rules (JCAR). *See* 5 ILCS 100/5-40(c) (2016).

In this opinion, the Board first summarizes the procedural history before providing background on ERMS and IEPA’s demonstration under the federal Clean Air Act (CAA) that the proposed “sunset” will not interfere with attaining other applicable requirements. The Board then discusses the issues presented, including the proposed “sunset” date of April 30, 2018, and a revision proposed by the Illinois Environmental Regulatory Group (IERG). Next, the Board concludes to submit the proposal to JCAR for second-notice review and issues its order.

**PROCEDURAL HISTORY**

On February 22, 2018, IEPA filed its rulemaking proposal (Prop.) accompanied by a Statement of Reasons (SR) and Technical Support Document (TSD).

On March 22, 2018, the Board accepted IEPA’s proposal for hearing and submitted the proposal to first-notice publication without commenting on its substantive merits. *See* 5 ILCS 100/5-40(b) (2016); 42 Ill. Reg. 6572-76 (Apr. 13, 2018).

Also on March 22, 2018, the hearing officer scheduled two hearings, the first on May 10, 2018, and the second on June 7, 2018. The Board published notice of the hearings in the *State Journal-Register* of Springfield on March 25, 2018; the *Chicago Sun-Times* on March 26, 2018; and the *Illinois Register* on April 20, 2018 (42 Ill. Reg. 7602 (Apr. 20, 2018)).

On March 22, 2018, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) perform an economic impact study of IEPA’s proposal and

respond to the request no later than May 7, 2018. *See* 415 ILCS 5/27(b) (2016). The Board did not receive a response.

On March 26, 2018, the Board received a comment on IEPA's proposal from Anjali Patel of Sage ATC Environmental Consulting (PC 1). On April 4, 2018, the Board docketed as a public comment an e-mail exchange between JCAR and the Board (PC 2).

On April 26, 2018, IEPA pre-filed testimony by Mr. David "Buzz" Asselmeier (IEPA Test.), manager of the Inventory Data and Systems Unit of the Air Quality Planning Section in IEPA's Bureau of Air. On May 8, 2018, a hearing officer order submitted to IEPA questions on its proposal and Mr. Asselmeier's testimony (Board Questions).

The first hearing took place as scheduled on May 10, 2018, and the Board received the transcript (Tr.1) on May 16, 2018. On May 17, 2018, IEPA filed responses to questions at the first hearing from the Board and IERG (IEPA Resps.).

The second hearing took place as scheduled on June 7, 2018. Alec Davis, Executive Director of IERG, and Mr. Asselmeier testified at the second hearing. The Board received the transcript (Tr.2) on June 12, 2018.

On July 3, 2018, the Board received post-hearing comments from IERG (IERG Cmts.) and IEPA (IEPA Cmts.). IEPA also filed a motion to correct the transcript. The Board has reviewed the motion, agrees with IEPA's corrections, and grants the unopposed motion. *See* 35 Ill. Adm. Code 101.500(d).

## **ERMS BACKGROUND**

### **Ozone**

ERMS intended to reduce emission of volatile organic material (VOM) in the Chicago nonattainment area (NAA) for ozone. SR at 1. While other emissions also influence ozone formation, "ERMS only regulates VOM emissions and does not allow a reduction in emissions of any other pollutants to be used to meet the overall cap." TSD at 1. Ozone typically forms on hotter and sunnier days, so ERMS addresses the period between May 1 and September 30. SR at 2; TSD at 1. This period is the "season" or "seasonal allotment period." *Id.*

### **Adoption of ERMS**

The Board adopted ERMS in 1997. Emission Reduction Market System Adoption of 35 Ill. Adm. Code 205, R97-13 (Nov. 20, 1997); *see* 21 Ill. Reg. 15777 (Dec. 5, 1997). In 2001, the U.S. Environmental Protection Agency (USEPA) approved it as part of Illinois' State Implementation Plan (SIP). 66 Fed. Reg. 52343 (Oct. 15, 2001); *see* SR at 1; TSD at 1.

ERMS sought reductions "needed for the post-1999 ozone Rate of Progress (ROP) plan for the now-revoked 1979 1-hour ozone standard." SR at 1; *see id.* at 3-4. The CAA required Illinois to reduce VOM emissions "at a rate of 9% over the three-year period that was in

question.” TSD at 3; *see* SR at 4. Mr. Asselmeier testified that ERMS was the first “cap and trade” system in the U.S. to reduce VOM emissions. IEPA Test. at 1. IEPA intended to provide sources with “more flexibility than is typically present in ‘command and control’ regulations.” TSD at 1. IEPA reports that ERMS achieved the required reductions and that it is not part of any other plans for Illinois. SR at 5.

The Board amended Part 205 in 2005. IEPA proposed amendments to ensure that Illinois maintained VOM emission reductions in the Chicago NAA after USEPA revoked the 1-hour ozone standard and implemented a new 8-hour standard. Amendments to Emissions Reduction Market System, 35 Ill. Adm. Code 205 and 211, R05-11, slip op. at 1-2 (June 2, 2005); *see* 29 Ill. Reg. 8892 (June 24, 2005). USEPA approved the amendments in 2008. 73 Fed. Reg. 38328 (July 7, 2008).

### **Affected Sources**

The proposed “sunset” affects sources in the Chicago NAA, which includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Aux Sable and Goose Lake Townships in Grundy County, and Oswego Township in Kendall County. SR at 6; TSD at 2. The TSD lists sources affected by the proposal. TSD, Attachment A at A-8 – A-15 (Table 4: Entities Included in the 110(l) Demonstration).

The Board asked IEPA whether it conducted outreach to regulated entities while it prepared its rulemaking proposal. Board Questions at 2. David Bloomberg, Manager of the Air Quality Planning Section in IEPA’s Bureau of Air, responded that IEPA communicated through industry groups. Tr.1 at 8, 24. During 2017, he twice presented information to members of the Illinois Environmental Regulatory Group (IERG). *Id.* IERG determined that its members “have at least 30 facilities that are ERMS-regulated sources.” IERG Cmts. at 1. Mr. Bloomberg also presented information informally to other ERMS participants. Tr.1 at 25.

The Board also asked IEPA to indicate whether any regulated entities oppose the proposal submitted to the Board. Board Questions at 2. Mr. Bloomberg testified that he did not know of any that opposed it. Tr.1 at 25. Although IEPA did not conduct outreach specifically to environmental groups, he suggested that those groups were aware of the proposed “sunset” and had not questioned or commented on it. *Id.* at 26.

### **ERMS Implementation**

#### **ERMS Sources**

ERMS sources must be in the Chicago NAA. TSD at 2. They must be required to obtain a Clean Air Act Permit Program (CAAPP) permit or Federally Enforceable State Operating Permit (FESOP) or have the potential to emit at least 25 tons of VOM annually and actual emissions of at least 10 tons of VOM during the seasonal allotment period. *Id.*

ERMS sources fall into categories described in the following subsections.

**Participating Sources.** These sources began operating before May 1, 1999, and meet the general requirements above or “had seasonal emissions of at least 10 tons in any seasonal allotment period beginning after 1999.” TSD at 2. Participating sources receive allotment trading units (ATUs) and must hold ATUs for all their VOM emissions during the season. *Id.*

**New Participating Sources.** These sources did not operate before May 1, 1999, but otherwise meet the general requirements above. TSD at 2. These sources do not receive ATU allotments. Because they must hold ATUs for VOM emissions during the season, they acquire them through trades or long-term transfer agreements. *Id.*

**Exempt Sources.** These sources would be required to participate in ERMS but have restricted emissions in one of two ways. TSD at 2. The first is to limit VOM emissions to less than 15 tons in a CAAPP permit or FESOP. *Id.* The second is to reduce emissions by at least 18% from baseline emissions. *Id.* Exempt sources do not receive allotments of ATUs and are not allowed to trade them. *Id.*

**General Participants.** These are entities other than participating sources or new participating sources which obtain an account and are allowed to trade ATUs. TSD at 2. Examples include brokers or participating sources that have shut down but wish to keep ATUs. *Id.* General participants do not receive ATU allotments but may receive ATUs from a participating source shutdown. *Id.* General participants may buy and sell ATUs. *Id.*

**Special Participants.** These entities establish accounts solely to receive or buy ATUs and immediately retire them. TSD at 2. Examples include environmental groups, schools, and individuals. *Id.* Special participants do not receive ATUs. *Id.* While they may buy or receive ATUs, they cannot sell them. *Id.* When a special participant receives an ATU, it immediately retires. *Id.* at 2-3.

### **Baseline Emissions**

Under ERMS, baseline emissions equal a participating source’s actual VOM emissions during two of the 1994, 1995, or 1996 ozone seasons selected by the source with an adjustment for over-compliance or noncompliance. TSD at 3. If VOM emissions during those years did not represent the source’s typical operation, it could demonstrate that the season was not representative and propose to use emissions data from an earlier or later season. *Id.* Baseline emissions determine allotment of ATUs to the source, with each ATU equivalent to 200 pounds of VOM. TSD at 3; SR at 2.

### **Alternative Compliance Market Account (ACMA)**

Because a cap and trade program was new to Illinois when the Board adopted ERMS, sources questioned whether it would have enough ATUs to purchase. ERMS created ACMA to address this view. TSD at 3; SR at 2. ACMA receives an additional one percent of the annual allotment, or approximately 1,000 ATUs. *Id.* While an ATU remains in ACMA, it does not expire. *Id.* Once ATUs transfer from ACMA to a source, they must be used within the two-

season deadline. *Id.* ATUs in ACMA are priced at 1.5 times average market price to discourage sources from relying on them. TSD at 3.

### **Shutdown Sources**

A source that shuts down and withdraws its permit becomes a general participant. TSD at 3. If the source wishes to retain its entire allotment, its ATUs must be traded to a separate general participant account. *Id.* If it does not do so, it retains 80% of its allotment with the remaining 20% sent to ACMA. *Id.* “Even though the source is shut down and not emitting, all of its annual allotment is still available for use by other participating or new participating sources.” *Id.*

### **Emissions Reduction Generator (ERG)**

A participating source, new participating source, or general participant may claim VOM emission reductions from another Chicago area source that is not a participating or new participating source. TSD at 4. It would then receive ATUs based on the reduction. *Id.* Most often, a source claims a reduction from another entity that permanently shuts down. Also, if a source uses technology or materials to lower emissions at the same production rate below the level required in 1996 or any SIP requirement, it may also receive ATUs as an ERG. *Id.* IEPA explains that, if a source outside ERMS makes process changes that are not required by rules, it may obtain ATUs for emission reductions without causing a net increase in VOM emissions. *Id.*

### **Inter-Sector Trading**

Inter-sector trades allow ERMS sources to claim reduced VOM emissions from mobile or area sources. TSD at 4. As an example, an entity could replace gasoline-powered lawn mowers with electric mowers in an area and then receive ATUs in the amount of the reduced emissions. *Id.* Because the reduced emissions from the area or mobile sources offset point source emissions above the allotment of ATUs, overall emissions remain the same or decrease. *Id.*

### **Allotment Procedures**

ERMS requires sources to hold ATUs for actual VOM emissions during the ERMS season. SR at 2. ERMS allots ATUs to sources in April before the season begins. TSD at 4; SR at 2. During the season, sources keep operating records to calculate and then report emissions. TSD at 4. Based on these emissions and the balance of ATUs in its account, a source may buy or sell ATUs as necessary by December 31. *Id.*; SR at 2.

In January, ERMS removes ATUs from each source’s account to reflect emissions during the previous season. *Id.* “No further action is required for sources holding a sufficient number of ATUs at the end of the year.” TSD at 4. If a source does not hold a sufficient number, it is in excursion and must either buy ATUs from ACMA or borrow against its allotment for the next year. *Id.*; SR at 2.

If a source does not use an ATU to offset emissions in its first season, it may use the ATU in the following season. TSD at 3; SR at 2. If the source does not use the ATU in the second season, it expires. *Id.*

### **VOM Emissions Under ERMS**

From 2002 to 2014, point sources accounted for approximately 10% of VOM emissions in the Chicago NAA. IEPA Test. at 2, Figure 2 (Chicago NAA VOM Emissions (tons/day)). IEPA states that ERMS sources account for approximately 70% of the point source VOM emissions. IEPA Test. at 2. IEPA concludes that emissions regulated by ERMS are “a very small percentage of the entire nonattainment area’s VOM emissions.” *Id.*

IEPA testified that, although ERMS intended to reduce VOM emissions over one three-year period, emissions from ERMS sources “continued to decrease over the first nine years of the program.” IEPA Test. at 1, citing Figure 1 (Reported Seasonal Emissions (tons/season)).

IEPA testified that “10-year averaging periods show steadily decreasing maximum ozone concentrations over the last several decades.” IEPA Test. at 2, citing Figure 3 (Chicago Yearly Maximum 8-hour Ozone Values 1978-2017)). Although year-to-year concentrations may fluctuate with meteorological conditions, “concentrations over the last four decades have dropped from 135 parts per billion (1978-1987) down to 89 parts per billion (2008-2017), a 34% decrease.” IEPA Test. at 2, citing Figure 3 (Chicago Yearly Maximum 8-Hour Ozone Values 1988-2017). Seasonal emissions from ERMS sources have not changed significantly since 2008. IEPA Test. at 1; *see* Figure 1.

IEPA’s Figure 3 shows maximum 8-hour ozone values increasing from 2013 to 2017, and the Board asked whether IEPA attributes these increases to year-to-year meteorology. Board Questions at 2. Mr. Bloomberg responded that fluctuation in ozone values generally results from changing meteorological conditions. Tr.1 at 18. He stressed that the increase noted by the Board does not reflect a long-term trend. *Id.* He added that ozone values for 2013 and 2014 were two of the lowest reported since 1978. *Id.*; *see* Figure 3.

### **Section 110(l) Demonstration**

Attached to the TSD was IEPA’s demonstration under Section 110(l) of the CAA. 42 U.S.C. § 7410(l); *see* TSD at A-1 – A-2. IEPA describes this as “an antibacksliding analysis” showing that the proposed “sunset” would not interfere with attaining or maintaining compliance with CAA requirements. SR at 5; *see* TSD at A-1.

IEPA states that allowable emission under ERMS are higher than emissions allowed under more recently adopted federal and state requirements. TSD at 5. Those rules and enforceable permit conditions limit emissions below ATUs received through ERMS. *Id.* at 1, 5. IEPA argues that its proposal “will not change current emissions levels overall in the Chicago NAA.” *Id.* at 5, A-1, A-17; SR at 4. IEPA also argues the “sunset” will not “interfere with the NAAQS for any criteria pollutants, prevention of significant deterioration, nonattainment new source review, or reasonable further progress; and will not violate Section 193 of the CAA

‘General Savings Clause’ or any applicable requirements of the CAA.” TSD at A-1; *see* SR at 5. IEPA concludes that its Section 110(l) demonstration shows that a “sunset” will have “no impact on the air quality in the Chicago NAA.” TSD at 5, citing TSD at A-1 – A-22.

In the following subsections, the Board addresses the elements of IEPA’s Section 110(l) demonstration.

### **ROP Plan**

In areas that do not meet the NAAQS for ozone, the CAA requires states to develop a SIP to attain and maintain the NAAQS. Section 182(c)(2)(B) of the CAA requires states to continue to reduce VOM emissions in those areas at a rate of nine percent over a subsequent three-year period. Reductions achieved under ERMS formed part of Illinois’ “post-1999 ozone ROP plan for the 2000-2002 milestone period as required under the now-revoked 1979 1-hour ozone NAAQS.” TSD at A-1. In 2001, USEPA approved the ROP plan as a SIP element. *Id.*, citing 66 Fed. Reg. 56904 (Nov. 13, 2001). The ROP plan estimated that ERMS would reduce VOM emissions by 12.6 tons per summer day, nearly seven percent of the total required reductions for that milestone period. TSD at A-1.

IEPA states that “Illinois has achieved all of the reductions needed under the ROP plan for the Chicago NAA” and that ERMS is not now part of any other ROP or reasonable further progress (RFP) plan. TSD at A-1.

### **Substitution**

Section 110(l) of the CAA provides in pertinent part that “[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA Section 171), or any other applicable requirement of this Act.” TSD at A-1. Draft Guidance on removing SIP elements states that USEPA “will approve a SIP revision that removes or modifies control measure(s) in the SIP only after the State has demonstrated that such removal or modification will not interfere (“noninterference”) with attainment of the National Ambient Air Quality Standards (NAAQS), Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.” *Id.* at A-1 - A-2, citing USEPA, “Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan (2003); *see* SR at 5.

As one option, USEPA guidance allows states to demonstrate noninterference through “[s]ubstitution of one measure by another with equivalent or greater emissions reductions/air quality benefit.” TSD at A-2. The substituted measure may be existing or new, but it “must be quantifiable, permanent, surplus, enforceable and contemporaneous (when the substitution is a new measure).” IEPA’s demonstration relies on substituting regulations that became effective after 1997 to demonstrate that an ERMS “sunset” will not cause increased emissions. *Id.* In response to a Board question, Mr. Bloomberg agreed that the new regulations are generally command and control requirements. Tr.1 at 14. IEPA also relies on federally enforceable permit limits, which IEPA has authority to establish in construction and operating permits. TSD at A-2, citing 415 ILCS 5/9.1, 39 (2016).

**State Measures.** IEPA lists 12 Reasonably Available Control Technology (RACT) source categories regulated by VOM rules for the Chicago NAA. TSD at A-2 – A-3 (Table 1: State VOM Control Programs), citing, *e.g.*, 35 Ill. Adm. Code 218.Subpart F (Coating Operations). IEPA states that, since adoption of ERMS, “these regulations have further reduced emissions for subject sources.” TSD at A-2. IEPA argues that these VOM controls “can be used as a substitution measure for the sunset of the ERMS program.” *Id.*

The Board asked IEPA whether newer regulations allow market-based mechanisms like ERMS as a compliance option. Board Questions at 1. Mr. Bloomberg responded that they do not. Tr.1 at 14. He added that “ERMS was always in addition to RACT rules and when new RACT rules have been put in place sources have had to comply with the new rules as well as the ERMS rule.” *Id.*

**Federal Measures.** Under Section 111 of the CAA, USEPA can develop New Source Performance Standards (NSPS) “that apply to specific categories of new, modified, and reconstructed stationary sources.” TSD at A-3. IEPA lists 12 NSPS regulations adopted or updated since 1997. *Id.*, citing, *e.g.*, 40 CFR 60 Subpart WW (Beverage Can Surface Coating). IEPA argues that these NSPS regulations “can be used as substitution measures for the sunset of the ERMS program.” *Id.*

Under Section 112 of the CAA, USEPA adopts NESHAPs “to regulate specific categories of stationary sources that emit hazardous air pollutants,” some of which are also VOM. TSD at A-4. IEPA lists 39 NESHAP regulations adopted or updated since 1997. *Id.* at A-4 – A-5, citing, *e.g.*, 40 CFR 63 Subpart QQQQ (Surface Coating of Wood Building Products). IEPA argues that these NESHAPs can be used as substitution measures for the “sunset” of ERMS. TSD at A-4.

### **Emissions Demonstration**

In this section of its Section 110(l) demonstration, IEPA compares allowable ATUs and corresponding VOM emissions with VOM emissions under the substitute measures. TSD at A-5 – A-17. In the following subsections, the Board summarizes the steps IEPA took to make this comparison.

**Source Inventory.** IEPA’s Bureau of Air employs a custom-designed database system that includes a subsystem for ERMS. TSD at A-5. IEPA’s inventory includes permitted sources and previously-permitted sources that are now subject to the Registration of Smaller Sources program (35 Ill. Adm. Code 201.175 (ROSS)). *Id.* When it issues a construction or operating permit, IEPA uses the application and permit to update data including allowable emissions. *Id.* at A-6. IEPA maintains emissions at the process level and then sums them to obtain source level emissions. *Id.* at A-5. The inventory identifies sources that must be reported on an ERMS seasonal report. *Id.*

IEPA identified each entity that received ATUs for the 2016 season. TSD at A-6. This included entities receiving ATUs as an ERG and also included ATUs deposited into ACMA. *Id.*



IEPA then included sources - primarily new participating sources - that did not receive allotments but whose emissions required ATUs. *Id.*; *see id.* at A-10 (Table 4). These comprised the total sources included in IEPA's Section 110(l) demonstration. *Id.*; *see id.* at A-8 – A-15 (Table 4).

**Allowable Emissions.** ERMS issues ATUs to sources in the same amount each year based on their baseline emissions. TSD at 1, A-6; *see id.* at A-8 (Table 4: Entities Included in the 110(l) Demonstration). To analyze allowable emissions from ERMS sources, IEPA also considered the following factors.

As of November 29, 2017, ACMA held approximately 58,091 ATUs, which have an indefinite lifespan. TSD at A-6; *see id.* at 3. IEPA considered only the 975 ATUs deposited into ACMA during 2016. *Id.* at A-6; *see id.* at A-8 (Table 4).

IEPA considered ATUs generated by ERGs. In 2016, ERMS allotted 3287 of these ATUs, 586 of which it deposited in ACMA and the remainder of which it allotted to eight sources. TSD at A-6, citing *id.* at A-8 (Table 4).

IEPA included in its analysis shutdown sources that received an allotment but do not emit VOM. TSD at A-6. ERMS allocated 5,721 ATUs to shutdown sources in 2016. *Id.*; *see id.* at A-8 (Table 4).

IEPA considered ATUs generated by Inter-Sector transactions, but none of these transactions took place in 2016. TSD at A-6; *see id.* at A-8 – A-15 (Table 4).

IEPA's analysis did not consider the two-year lifespan of ATUs. TSD at A-6. "Any ATU issued in 2016 was assumed to be used for 2016 for this [Section] 110(l) demonstration." *Id.*

To calculate allowable emission levels under the substitution measures, IEPA summed allowable emissions from each emissions process to the source level. TSD at A-6, citing *id.* at A-28 – A-91 (Table 6: ERMS Emissions Units). These allowable emissions levels are based upon enforceable regulations or permit conditions limiting VOM emissions. *Id.* at A-6, citing *id.* at A-8 – A-15 (Table 4).

**Emissions Comparison.** Because an ATU is the equivalent of 200 pounds of VOM emissions, IEPA's Table 4 converted sources' 2016 ATU allotment to tons per season. TSD at A-16. To reflect the five-month duration of the ERMS season, IEPA multiplied annual allowable emissions by 5/12. *Id.* IEPA argues that ERMS sources are generally larger sources with little seasonal variation in operations, so it considers 5/12 conversion a "reasonable assumption." *Id.*

Of the 230 emission units in Table 4 that do not have a permanent and enforceable limit, 192 are natural gas-fired combustion units, and many of the rest are bread-baking units. TSD at A-16. While these emission units often have permit limits, IEPA states that the method establishing a limit "may not necessarily be considered permanent and enforceable by USEPA."

*Id.* (emphasis in original). These 230 sources require an offset of 916.94 tons per year, or 3.8% of total emissions used for substitution measures. *Id.*

IEPA estimated potential emission rates for these 230 units. For the 192 natural gas-fired combustion units, IEPA relied on data in the emissions inventory to calculate an annual emission rate in tons based on operating at capacity every hour of the year. TSD at A-16. IEPA argued that this calculation over-estimates emissions. *Id.* For bread baking ovens, IEPA determined the highest reported hourly emission rate from the most recent 10 years of data and multiplied that rate by the 8,760 hours in a year. *Id.* For the last 20 of these 230 units, IEPA multiplied their substitution measure emissions rates by two. IEPA argues that this over-estimates emissions, as this category includes flares and fugitives that already operate continuously. *Id.* at A-16 – A-17. For these 230 units, IEPA’s adjustments estimated potential emissions increasing 224.08 tons per year in addition to the total of the substitution measures. *Id.* at A-17.

Under ERMS, sources are allowed to emit 101,654 ATUs, the equivalent of 10,165.4 tons per season. TSD at A-17, citing *id.* at A-8 – A-15 (Table 4). Substitution measures allow ERMS sources to emit 23,967.79 tons. With the increase of 224.08 tons of potential emissions from the 230 sources lacking permanent and enforceable limits, total allowable emissions equal 24,191.87 tons, 5/12 of which equals 10,079.95 tons per season. *Id.* at A-17. Because emissions under the substitution measures are 85.45 tons per seasons less than current ERMS allowances, IEPA concludes that “there will be no increase in allowable VOM emissions due to the proposed amendment to sunset ERMS.” *Id.*; *see id.* at 5.

### **Additional Data**

In addition to the Section 110(l) demonstration, IEPA compared ERMS allotments to actual emissions. TSD at A-17. IEPA’s comparison relies on its Annual Performance Review “assessing the effect of VOM emissions reductions in the Chicago area on progress toward meeting the RFP requirements and achieving attainment of the ozone NAAQS.” *Id.*, citing 35 Ill. Adm. Code 205.760 (Market System Review Procedures).

IEPA states that, since 2000, VOM emissions from ERMS sources have decreased. TSD at A-17; *see id.* at A-18 (Figure 1: Historical Emissions (ATUs)). IEPA attributes this in part to shutdowns and to newer sources emitting at lower rates. *Id.* at A-17. IEPA argues that new VOM emission regulations “makes it unlikely that actual emissions will return to the previous levels when ERMS was first implemented” and concluded that “actual emissions will never come close to those that were being allotted.” *Id.*

IEPA argues that, because emissions are significantly lower than allotted ATUs, “a large percentage of the ATUs issued in a given year expire without being used to offset emissions.” TSD at A-18; *see id.* at A-19 (Figure 2: Expiring ATUs Compared to the Allotment and Figure 3: Expiring ATUs as a Percentage of the Allotment).

Two larger sources, 3M and Viskase, have shut down since the Board adopted ERMS, although the two sources continue to receive a combined annual allotment of 13,381 ATUs. TSD at A-20; IEPA Test. at 2. Only Viskase regularly trades its ATUs, and its transaction

“make up a large percentage of the ATUs traded.” TSD at A-20. Still, emission reductions resulting from the Viskase shutdown account for more reductions than increases resulting from ATU purchases. *Id.* (Figure 4: ATUs Purchased v. Viskase Allotment); IEPA Test. at 2. With significantly reduced emissions and Viskase’s regular sales of its ATUs, IEPA argues that ERMS “has effectively ceased to be an effective method of limiting emissions compared to other, newer regulations.” *Id.* at A-21. IEPA testified that “ERMS has ceased to be a market system and is now simply functioning the same as the current New Source Review rules.” IEPA Test. at 2. IEPA further testified that “there is no gain in continuing to implement the ERMS program” and that “it makes sense to sunset the program. . . .” *Id.*

The Board asked Mr. Asselmeier to explain how the functions of ERMS and New Source Review are similar to one another. Board Questions at 2. He clarified that, under New Source Review, increased emissions must be offset by reducing emissions elsewhere in the nonattainment area. Tr.1 at 19. Under ERMS, a single shutdown source has supplied the ATUs needed to offset emissions at other sources. *Id.*

The Board also asked Mr. Asselmeier to comment on whether the New Source Review rules have also become ineffective. Board Questions at 2. He responded that the rules had not become ineffective. Tr.1 at 20. He clarified that New Source Review tends to accomplish results similar to those that had been achieved by ERMS. *Id.*

### **Additional Demonstrations**

**Non-Interference with Other NAAQS.** IEPA stresses that ERMS did not address any pollutant other than VOM in the Chicago NAA. IEPA argues that its proposal does not affect attaining or maintaining standards for other criteria pollutants. TSD at A-21.

**General Savings Clause.** Section 193 of the CAA requires that authorities in effect before November 15, 1990, must remain in effect. TSD at A-21. Because the Board adopted ERMS in 1997 for implementation beginning in 2000, it was not part of the SIP before 1990. *Id.* IEPA argues that “the General Savings Clause does not apply to an ERMS program SIP revision.” *Id.*

**Significant Interstate Contribution.** USEPA guidance establishes that SIP measures to meet federal requirements may be substituted with other measures only if federal requirements continue to be met. TSD at A-21. While ERMS was part of the post-1999 ozone ROP for the revoked 1979 ozone standard, IEPA argues that it “was not adopted specifically to meet any federal regulations as stated in the guidance.” *Id.* IEPA further argues that it has demonstrated that substitution measures are more protective than ERMS. *Id.* IEPA concludes that its proposal “will not result in significant interstate contribution.” *Id.*

### **IEPA’s Summary of Section 110(l) Demonstration**

IEPA argues that ERMs is less restrictive than substitute measures and that those measures “have tighter emissions limits overall.” TSD at A-5. IEPA concludes that the replacement measures assessed in its demonstration ensure that the proposed “sunset” will not

increase allowable emissions or result in any increase in actual emissions. *Id.* at A-21; *see* IEPA Test. at 2.

## **DISCUSSION**

### **Basis for “Sunset”**

Emissions from ERMS sources have decreased since 2000. SR at 3; *see* TSD at A-17. Some sources have permanently shut down. In addition, “[n]ew sources and emission units that have become subject to ERMS do not emit at the rate of these older shutdown sources.” SR at 3. Also, federal and state regulations adopted since 2000 have reduced allowable and actual emissions. *Id.* IEPA concludes that “total allowable VOM emissions are lower under the new federal and state regulations than under ERMS.” *Id.* at 4, citing TSD at A-1 – A-17 (noninterference demonstration).

IEPA argues that, “[w]ith new technology, new regulations, and existing New Source Review regulations, it is extremely unlikely that emissions will increase significantly to any of the levels seen in the early years of ERMS.” IEPA Test. at 1-2; *see* SR at 3. IEPA adds that, with emissions lower than when ERMS was implemented, “there is a large surplus of ATUs. A high percentage of the ATUs issued in a given year are not used to offset emissions and simply expire.” IEPA Test. at 4.

When asked why IEPA proposed to “sunset” ERMS instead of repealing it, Mr. Bloomberg responded that IEPA prefers to “keep the rules on the books” for enforcement purposes. Tr.1 at 11. However, IEPA confirmed that “there are no pending enforcement cases” under ERMS. IEPA Resps. at 1. If the Board adopts the proposed “sunset,” IEPA has no specific plan to propose a repeal, but it may do so “when it is clear that it’s no longer necessary to have these rules on the books” for enforcement purposes. Tr.1 at 12.

Anjali Patel of SAGE ATC Environmental Consulting commented that the proposed “sunset” is “a step backwards for Illinois. Ozone levels are going up in Illinois, not going down.” PC 1. The Board recognizes that the yearly maximum 8-hour ozone value may increase from one year to the next. IEPA’s Figure 3 indicates that this occurred from 2013 to 2017. IEPA Test., Figure 3. IEPA attributes this occurrence generally to fluctuating meteorological conditions. Tr.1 at 18. As IEPA stressed, the maximum values for 2013 and 2014 were two of the lowest recorded since 1978. IEPA persuasively argues that recent changes do not indicate a long term trend. Yearly maximum 8-hour ozone values have fallen from an average of 135 parts per billion from 1978 to 1987 to an average of 89 parts per billion from 2008 to 2017, a 34% reduction. IEPA Test. at 2, Figure 3.

The Board does not discount Ms. Patel’s position regarding ozone emissions. However, IEPA’s proposal specifically addresses ERMS sources, and IEPA persuasively demonstrates that seasonal VOM emissions from these sources have not significantly changed since 2009. IEPA Test. at 1, Figure 1; *see* TSD at A-18 (Figure 1: Historical Emissions (ATUs)). Emissions regulated by ERMS are “a very small percentage of the entire nonattainment area’s VOM emissions.” IEPA Test. at 2, Figure 2. Also, the Board has reviewed IEPA’s Section 110(I)

demonstration. The Board agrees that it supports the conclusion that the proposed “sunset” will not affect emission levels or interfere with attaining CAA requirements. *See* TSD at A-1.

Based on these factors, the Board finds that it is appropriate to consider a “sunset” of the ERMS program.

The Board notes Mr. Davis’ testimony that “IERG strongly supports ending the ERMS program for the same reasons that have been expressed by the Illinois Environmental Protection Agency.” Tr.2 at 9; *see* IERG Cmts. at 1 (citing testimony supporting “sunset”). In its post-hearing comments, IERG “wholeheartedly supports termination of the ERMS program.” IERG Cmts. at 3. “We appreciate that Illinois EPA does not want to continue a program that is not providing environmental benefit and we applaud efforts to more appropriately manage Illinois EPA and regulated entity resources.” *Id.* at 8.

However, while “IERG encourages the Board to approve IEPA’s proposal here” (Tr.2 at 10), IERG is uneasy with IEPA’s proposed “sunset” date. IERG believes that, if the Board adopts an April 30, 2018 “sunset,” then sources will not be complying with ERMS requirements that remain in permits and the SIP. IERG suggests that this noncompliance would continue until USEPA approves the “sunset” as a SIP revision. IERG Cmts. at 1-2; Tr.2 at 14-15. While IERG’s post-hearing comments conclude by re-stating strong support for a “sunset,” IERG seeks a “proper path for doing so.” IERG Cmts. at 8.

In the following subsections of its opinion, the Board proceeds to consider whether IEPA’s proposal establishes this path.

### **“Sunset” Date of April 30, 2018**

IEPA proposed to “sunset” ERMS on April 30, 2018, the final day before what would be the 2018 seasonal allotment period. SR at 4; TSD at 5; IEPA Test. at 2. IEPA states that “the date of April 30, 2018, demonstrates to affected sources that the Agency is not expecting sources to meet the requirements of the ERMS rule for the 2018 season as the rule is expected to sunset before the end of the year.” IEPA Test. at 3; *see* TSD at 5; *see also* Tr.1 at 23; PC 2 (JCAR).

Mr. Asselmeier testified that IEPA had not allocated ATUs for 2018, which it would typically have done in April. Tr.1 at 29; *see* SR at 2; TSD at 4. Trading typically occurs after the end of the season in November and December and is “highly unusual” earlier than those months. Tr.1 at 29; *see* IEPA Test. at 2-3. Based on its proposed “sunset” date of April 30, 2018, IEPA considers 2017 to have been “the last ERMS season.” Tr.1 at 29.

IEPA states that “companies would not need to do anything further at this point and really there is nothing companies can do in terms of trading allowances.” Tr.1 at 29. If the Board adopts the proposed “sunset” date before the end of the season, then ERMS sources would not be required to file seasonal emissions reports in November 2018 and would not be required to hold ATUs by December 31 for the 2018 season. Tr.1 at 30.

IEPA emphasized that, if the Board adopts the proposed “sunset,” then “ERMS requirements will no longer be effective at the State level.” IEPA Resps. at 2. IERG does not generally dispute the view that adopting the proposed “sunset” would mean that ERMS is no longer enforceable as a matter of Illinois law. *See* Tr.2 at 10, 30.

However, IEPA acknowledged that “the ERMS rule is technically federally enforceable until USEPA approves the sunset into the SIP.” Tr.2 at 39; *see* IEPA Cmts. at 1-2, 9; IEPA Resps. at 2. IERG argues that, until USEPA issues this approval, ERMS sources will not be complying with federal SIP and permit requirements. IERG Cmts. at 1, citing Tr.2 at 10, 11, 14. To address the risk it perceives, IERG proposes to revise IEPA’s “sunset” date. Tr. 2 at 15; *see* IERG Cmts. at 4. IEPA testified that IERG’s concern is “purely theoretical and has no practical basis” (Tr.2 at 39), and IEPA “strongly opposes” IERG’s proposed revision (IEPA Cmts. at 1-2).

In the following subsections of its opinion, the Board addresses these federal requirements and IERG’s proposed revision.

### **SIP Revision**

Because ERMS is part of Illinois’ SIP, IEPA must submit any ERMS revision to USEPA. SR at 5, citing 40 C.F.R. § 51.014. Mr. Bloomberg indicated that, if the Board adopts the proposed “sunset,” IEPA would “fairly quickly” submit a SIP revision to USEPA. Tr.1 at 32.

For an ERMS “sunset,” IEPA’s Section 110(l) demonstration forms the basis of the request for a SIP revision. IEPA Cmts. at 11. The Board asked IEPA whether USEPA had determined that IEPA’s demonstration satisfies CAA requirements. Board Questions at 1. Mr. Bloomberg stated that IEPA “waited to submit this proposal until USEPA agreed with the Bureau of Air’s [Section] 110(l) demonstration.” Tr.1 at 13. USEPA has “extensively” reviewed the demonstration and “unofficially determined” that it meets these requirements. *Id.* USEPA “indicated that it is likely approvable as a SIP revision.” SR at 6; *see* Tr.1 at 33; IEPA Cmts., Attachment 1.

IEPA acknowledges that USEPA will not make an official determination until Illinois submits amended rules as a SIP revision. Tr.1 at 13. Under the CAA, USEPA has six months to determine whether a request for a SIP revision is complete and then 12 months to determine whether to approve it. IEPA Cmts. at 4, n.3, citing 42 U.S.C. § 110(k). Mr. Bloomberg suggests that, because USEPA has already reviewed the demonstration, it may be able to approve it “quickly.” Tr.1 at 32. However, he does not expect USEPA to approve a SIP revision before December 31, 2018. *Id.* at 33.

IEPA acknowledges that SIP provisions continue to be enforceable as a matter of federal law until USEPA approves a SIP revision. IEPA Cmts. at 1, 9; Tr.2 at 39; IEPA Resp. at 2. IEPA explains that this time between the Board’s adoption of an ERMS “sunset” and USEPA’s approval as a SIP revision is the “SIP gap.” IEPA Cmts. at 2. IEPA argues that “[i]t is not a new concept, in Illinois or other states.” *Id.*; *see id.* at 5. The SIP gap “exists every time the Board amends a rule or grants regulatory relief from a rule” that is part of the SIP. Tr.2 at 38-39; *see* IEPA Cmts. at 5. The SIP gap results from the joint state and federal nature of environmental

regulation. IEPA Cmts. at 2, 7. IEPA argues that, until federal action eliminates it, “there is simply no good State solution for the SIP gap.” *Id.* at 7.

As an example of the SIP gap, IEPA states that the Board “sunset” part of the Nitrogen Oxide (NO<sub>x</sub>) SIP Call Trading Program in 2009, but USEPA did not approve the SIP revision until 2010. *Id.* at 5, n.5, citing 75 Fed. Reg. 9103 (Mar. 1, 2010); Nitrogen Oxide (NO<sub>x</sub>) Trading Program Sunset Provisions for Electric Generating Units (EGUs): New 35 Ill. Adm. Code 217.751, R09-20 (Oct. 15, 2009). IEPA also cites the hypothetical example of a source that obtains a variance from a federal emissions limit. Although the source obtains regulatory relief as a matter of state law, the federal limit remains enforceable until USEPA approves the variance. While the source risks SIP noncompliance if it immediately avails itself of the relief in the variance, IEPA “cannot recall any enforcement actions brought by any party in such situations in Illinois.” IEPA Cmts. at 6, n.6. IEPA argues that the SIP gap has not resulted in “adverse impacts to Illinois sources.” IEPA Cmts. at 9.

IEPA believes that IERG’s concern with enforcement of SIP requirements during the SIP gap is largely theoretical and not well-founded. *See* IEPA Cmts. at 2, 4, 7, 9; Tr.2 at 39, 42. IEPA argues that “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 the SIP.” IEPA Resps. at 2. Mr. Bloomberg testified that this enforcement is “beyond my imagination.” Tr.1 at 31. “USEPA understands” that there will be time between adopting a rule and approving a SIP revision. IEPA Resps. at 2. “To the Agency’s knowledge neither USEPA nor third parties have ever pursued an Illinois source for failure to comply with a rule that had been amended at the state level and [unofficially] pre-approved by USEPA.” IEPA Cmts. at 2, citing Tr.2 at 39. IEPA considers it particularly unlikely that any entity would attempt to enforce ERMS, which IEPA characterizes as “an obsolete program” that “no longer provides environmental benefit.” IEPA Cmts. at 3.

IERG generally acknowledges that a SIP gap commonly occurs before USEPA approves state action including regulatory relief. IERG Cmts. at 3, citing Tr.2 at 38-39. In his testimony for IERG, Mr. Davis did not generally disagree with IEPA’s projection that federal enforcement of ERMS requirements during the SIP gap was unlikely. Tr.2 at 27. However, IERG argues that, even if IEPA correctly projects that enforcement does not occur, it does not address noncompliance. IERG Cmts. at 2. IERG argues that, during the SIP gap, sources will not be complying with SIP requirements as a matter of federal law. IERG requests that that Board structure a “sunset” so the ERMS sources can operate and comply “seamlessly” through the SIP gap. IERG Cmts. at 3.

IEPA suggests that this “seamless” compliance does not require a special structure. A source’s permit reflects a historical baseline of emissions. IEPA Cmts. at 8; *see* Tr.2 at 43. Mr. Asselmeier testified that the permit “guarantees” the corresponding ATUs, and he suggested that IEPA action to populate the sources’ accounts is “maybe a technicality” while the permit is in effect. Tr.2 at 44-45.

IERG cites an ERMS rule that the allotment and baseline do not constitute property rights. IERG Cmts. at 3, citing 35 Ill. Adm. Code 205.400(d). The Board does not construe

IEPA's reference to a permit "guarantee" as the creation of any property right. Furthermore, after the language cited by IERG, the subsection provides that the ERMS rules shall not be construed "to limit the authority of the Board to terminate or limit such allotment or baseline" through its rulemaking authority. 35 Ill. Adm. Code 205.400(d). Therefore, when placed in this whole context, the rule does not diminish or even apply to IEPA's testimony and comments.

IEPA argued that a source concerned with non-compliance can continue to comply with the ERMS rule until the SIP is approved. Tr.2 at 40. To do so, the source "can certainly emit below their allowance allocations, submit reports to the Agency, and trade ATUs amongst themselves." IEPA Cmts. at 8; *see* Tr.2 at 40. Mr. Asselmeier also addressed sources at which emissions were above their allocations. Because IEPA proposed a "sunset" date of April 30, 2018, for the ERMS requirements, it did not intend to require "sources to true up at the end of this current ozone season." Tr.2 at 46. If the Board adopts the proposed "sunset" date, a source exceeding its allotment would not be required to purchase ATUs on the market. *Id.*

IERG also cites an ERMS rule that participating sources "shall" at the end of the year hold ATUs not less than their seasonal VOM emissions. IERG Cmts. at 2, citing 35 Ill. Adm. Code 205.150(c). As Mr. Asselmeier testified, however, IEPA proposed April 30, 2018, the last day before what would be the 2018 allotment period, as the date on and after which Part 205 does not apply. *See* Tr.2 at 46. Based on its proposed "sunset" date, IEPA "is not expecting sources to meet the requirements of the ERMS rule for the 2018 season." IEPA Test. at 3; *see* Tr.1 at 29.

The Board concludes that IEPA has persuasively addressed IERG's testimony and comments. IEPA identified a general course for sources concerned with SIP compliance during a SIP gap. The Board does not weigh the issue of SIP compliance against IEPA's proposed "sunset" date of April 30, 2018. However, the Board recognizes IERG's comment that ERMS sources may hold permits with conditions based on current ERMS rules, and the Board addresses that issue in the following subsection.

### **ERMS Permit Conditions**

Sources may have a FESOP or CAAPP permit that refers to ERMS requirements under Part 205. Tr.1 at 28; *see* Tr.2 at 10. Because USEPA cannot approve the proposed "sunset" date of April 30, 2018, until that date has passed, IERG asked how IEPA intended to address those sources for the 2018 season. Tr.1 at 28-29, 30-31, 33-34; Tr.2 at 10. IERG testified that sources with CAAPP permits "must submit annual compliance certifications which detail a source's compliance or non-compliance with each CAAPP permit condition." Tr.2 at 10.

Mr. Bloomberg's testimony indicated that, when the Board repeals or "sunssets" a rule, IEPA recognizes that the adopted rule "always takes priority" over the terms of the permit. Tr.1 at 34. He suggested that a permit condition based on a rule that had been "sunset" would no longer be enforceable. *Id.* IEPA explained that, if the Board adopts the proposed "sunset," a source with a CAAPP permit can submit a certification explaining that ERMS requirements no longer apply. IEPA Resps. at 2. Because the ERMS requirements would "sunset" on and after April 30, 2018, IEPA states that this explanation certifies compliance. *Id.* However, Mr.



Bloomberg acknowledged that an ERMS source “might not like having something in their permit of that nature” and “can apply for a modification.” Tr.1 at 34; *see* IEPA Resps. at 2.

Once the Board adopts a “sunset,” CAAPP sources can apply for a minor permit modification. The benefit of the requested modification runs from the time IEPA receives the application. IEPA Cmts. at 8, 10 n.10, citing 415 ILCS 5/39.5(14)(a)(vi) (2016); Tr.2 at 39. IEPA stresses that ERMS sources could apply to IEPA for modification before USEPA approves a SIP revision. IEPA Cmts. at 8. IEPA argues that this option “should allay any concerns that CAAPP sources may have regarding certification of compliance with their permit conditions.” *Id.* at 8-9, 10.

IEPA states that sources holding FESOPs “are not required to certify compliance with permit conditions.” IEPA Cmts. at 9 n.9., 10. Nonetheless, a FESOP source “can apply to have ERMS requirements removed from its permit” once USEPA approves a SIP revision. IEPA Resps. at 2.

The Board concludes that IEPA has persuasively addressed IERG’s testimony and comments. IERG identified a path for sources concerned over compliance with permit conditions based on ERMS rules. The Board does not weigh the issue of these permit conditions against IEPA’s proposed “sunset” date of April 30, 2018. In the following subsection, the Board addresses IERG’s proposed revision of IEPA’s “sunset.”

### **IERG’s Proposed Revision**

IERG believes that its concerns with non-compliance can be addressed by adjusting the timing of the “sunset.” Tr.2 at 15. IERG’s proposed Section 205.115 states that “[t]he provisions of this part shall not apply on or 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.” *Id.*

IERG argues that its 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.” *Id.* at 16; *see id.* at 19-20. In his testimony for IERG, Mr. Davis stated that the 2021 date seeks to balance a “sunset” against rules that continue to be federally enforceable. *Id.* at 23. To be certain that federal and state requirements terminate at the same time, IERG members are willing to continue meeting ERMS requirements. *Id.*; *see* IERG Cmts. at 4. IERG proposed April 30, 2021, as an alternate “sunset” to account for time to adopt a rule and submit a SIP revision to USEPA. Tr.2 at 22. IERG stated that this amount of time is based on other unspecified SIP revisions. IERG Cmts. at 4. Mr. Davis testified that this date “might help drive activities.” Tr.2. at 20.

IERG suggested this revision to IEPA but learned that IEPA “does not support adjusting the sunset date.” Tr.2 at 23.

IEPA argues that IERG’s proposal would cause regulatory uncertainty because there is no assurance that USEPA will approve a SIP revision by April 30, 2021. Tr.2 at 41; IEPA Cmts. at

4. If USEPA does not do so, IEPA expects IERG to request another extension of the “sunset.” This extension would trigger another request for a SIP revision and additional time for USEPA to approve it. IEPA Cmts. at 5, citing Tr.2 at 21, 23-24.

IERG argues that Ohio recently proposed to remove a component of its ozone SIP and make it effective on the date USEPA approved a SIP revision. IERG Cmts. at 4-5, citing 82 Fed. Reg. 16932 (Apr. 7, 2017); OAC 3745-72-1 to 8. However, Ohio sought to replace low Reid vapor pressure fuel requirements that were continuing to provide specified emissions reductions. 82 Fed. Reg. 10727-32 (Feb. 15, 2017). IEPA and IERG agree that ERMS differs in this significant respect. The Board is not persuaded that Ohio’s action is a convincing example for this proposed “sunset.”

In its post-hearing comments, IERG suggests that its proposed April 30, 2021, “sunset” is warranted because IEPA has acted unilaterally without Board approval to terminate its ERMS obligations. IERG Cmts. at 5. IERG argues that IEPA “is not meeting its requirements under the ERMS program and is placing ERMS sources in noncompliance.” *Id.* As the Board noted above, IEPA proposed a “sunset” of April 30, 2018, to signal that sources are not expected to comply with ERMS for the 2018 season. IEPA Test. at 3. While ERMS may include enforcement mechanisms, those mechanisms are part of the rules that IEPA proposes to sunset. The Board is not persuaded that IEPA’s proposal creates the enforcement risk IERG describes, justifies an extended “sunset,” or undermines the Board’s authority to consider and propose rules.

Although IERG argues that its proposal “will not interfere” with IEPA’s effort to streamline regulations (IERG Cmts. at 5), the Board disagrees. Under IERG’s proposal, ERMS sources would be committing resources to comply with rules - that no longer provide an environmental benefit - for as long as three years more than proposed by IEPA. *See* Tr.2 at 40; IEPA Cmts. at 9. IEPA states that this is not consistent with its own efforts or the administration’s direction to simplify regulations. Tr.2 at 41; IEPA Cmts. at 9. IEPA argues that the proposed extension would cause unnecessary burdens when it has outlined a plausible compliance path for ERMS sources during the SIP gap. IEPA Cmts. at 9.

For the reasons above, the Board declines to adopt IERG’s proposed revisions.

### **Technical Feasibility**

IEPA argues that, because its proposal “sunsets” regulations and does not impose new technical requirements on affected sources, it is technically feasible. SR at 6; TSD at 5. The Board agrees with IEPA’s assessment and finds that the proposed “sunset” is technically feasible.

### **Economic Reasonableness**

As noted above under “Procedural History,” the Board requested that DCEO perform an economic impact study of IEPA’s proposal but did not receive a response. *See* 415 ILCS 5/27(b) (2016).

IEPA argues that its proposed “sunset” does not impose new costs on regulated entities and that it will reduce administrative burdens. SR at 4, 6; TSD at 5. Mr. Asselmeier testified that a “sunset” would eliminate economic burdens associated with keeping records and filing reports. Tr.1 at 15. It would also eliminate burdens for sources that do not trade, which must designate a trade account officer and file an annual emissions report. *Id.* at 17.

Mr. Asselmeier and Mr. Bloomberg testified that a single shutdown source, Viskase, has provided most of the ATUs necessary to offset emissions at other sources. Tr.1 at 19-21. IEPA agreed that, if the Board adopts the proposed “sunset,” Viskase “would not be able or allowed to sell ATUs to any source.” *Id.* at 21. Mr. Asselmeier agreed that this would result in an economic loss to Viskase. *Id.* at 20-21. However, he was not aware that Viskase opposes the proposed “sunset.” *Id.* He suggested that ERMS transactions were not a large source of Viskase’s income. *Id.* at 21-22.

IEPA’s summary of ATU transactions from 2012 to 2017 shows a yearly average price between \$19.31 and \$20.00 per ATU in market-type transactions. IEPA Resps., Att. 1. To establish this average based on market forces, IEPA’s average did not include transactions within the same entity. *See id.* at 4, 11-12. IEPA also excluded transactions reporting that the trade involved “additional consideration,” which the parties are not required to identify. *Id.* at 4-5. IEPA also excluded transfer agreements with no end date, where the average price per transaction changes over the duration of the agreement. *Id.* at 4.

IEPA’s analysis of economic effects of the proposal reports that the “sunset” would annually save IEPA approximately \$36,800. IEPA Cmts., Attach. 2. IEPA also projects that the “sunset” would have a positive effect on “all sources subject to ERMS” because recordkeeping and reporting requirements would no longer apply to them. IEPA states that these costs vary among the sources and that the total decrease in costs is not known. *Id.*

Based on these factors, the Board finds that the Agency’s proposal is economically reasonable and will not have an adverse economic impact on the people of Illinois.

### **CONCLUSION**

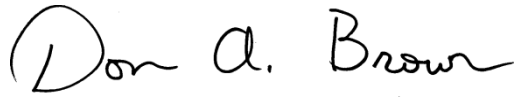
For the reasons above, the Board proposes amended air pollution regulations for second-notice review by JCAR. The proposal would adopt a new Section 205.115 of the Board’s ERMS rules to establish a “sunset” date of April 30, 2018. In its order, the Board makes non-substantive simplifying and clarifying revisions to IEPA’s original proposal.

### **ORDER**

The Board directs the Clerk to submit the second-notice proposal to JCAR for its review.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 23, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board

TITLE 35: ENVIRONMENTAL PROTECTION  
 SUBTITLE B: AIR POLLUTION  
 CHAPTER I: POLLUTION CONTROL BOARD  
 SUBCHAPTER b: ALTERNATIVE REDUCTION PROGRAM

PART 205  
 EMISSIONS REDUCTION MARKET SYSTEM

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| 205.120        | Abbreviations and Acronyms   |
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|---------|-----------------------------------|
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|         |  |
|---------|--|
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| 205.337 | Changes in Emissions Determination Methods and Sampling, Testing, Monitoring and Recordkeeping Practices |

SUBPART D: SEASONAL EMISSIONS MANAGEMENT

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|---------|------------------------------------|
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Section

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SUBPART F: MARKET TRANSACTIONS

Section

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205.610 Application for Transaction Account  
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SUBPART G: PERFORMANCE ACCOUNTABILITY

Section

205.700 Compliance Accounting  
205.710 Alternative Compliance Market Account (ACMA)  
205.720 Emissions Excursion Compensation  
205.730 Excursion Reporting  
205.740 Enforcement Authority  
205.750 Emergency Conditions  
205.760 Market System Review Procedures

AUTHORITY: Implementing Section 9.8 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.8, 27 and 28].

SOURCE: Adopted at 21 Ill. Reg. 15777, effective November 27~~25~~, 1997; amended in R05-11 at 29 Ill. Reg. 8848, effective June 13, 2005; amended in R18-22 at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

**Section 205.115 Sunset Provision**

~~This~~~~The provisions of this Part does~~ shall not apply on and after April 29~~30~~, 2018. Subject sources must comply with this Part before~~prior to~~ April 30, 2018.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)