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From: [McGill, Richard](#)
To: [Brown, Don](#)
Cc: [Fox, Tim](#)
Subject: Fw: PCB Resp. to JCAR Obj. & Rec. 35 IAC 205 ERMS R18-22
Date: Friday, December 7, 2018 9:39:34 AM
Attachments: [final R18-22 JCAR Obi Resp 3.pdf](#)
[final R18-22 JCAR Rec Resp 3.pdf](#)

Good morning, Mr. Clerk!

Please docket this email message and two attachments in R18-22, ERMS. The docket entry should read "Board's Response to JCAR's Objection and Board's Response to JCAR's Recommendation".

If you have any questions, please let me know. Thank you.

From: McGill, Richard
Sent: Thursday, December 6, 2018 4:00 PM
To: 'JonathanE@ilga.gov'
Subject: PCB Resp. to JCAR Obj. & Rec. 35 IAC 205 ERMS R18-22

Good afternoon:

This submittal concerns 35 Ill. Adm. Code 205, Board rulemaking docket R18-22.

In compliance with applicable JCAR rules (1 Ill. Adm. Code 220.1200, 220.1250), I attach both the Board's Response to JCAR's Objection and the Board's Response to JCAR's Recommendation.

If you have any questions, please let me know. Thank you.

Respectfully,

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December 6, 2018

Agency: Pollution Control Board
Heading of Part: Emissions Reduction Market System
Code Citation: 35 Ill. Adm. Code 205
Register Citation: 42 Ill. Reg. 6572 (Apr. 13, 2018)

Agency Response to Specific Joint Committee Objection:

At its meeting on November 13, 2018, the Joint Committee on Administrative Rules (JCAR) considered the Board's second-notice proposal to adopt an April 30, 2018 "sunset" of the Emissions Reduction Market System (ERMS).

First, JCAR objected to this proposal "because it sets a retroactive sunset date for the system that predates any possible adoption date for this rulemaking."

The proposed "sunset" will not impose retroactive obligations on ERMS sources. The rulemaking record before the Board in R18-22 establishes that ERMS no longer provides emissions reductions beyond those provided by more recent federal and State "command and control" regulations. A later "sunset" date would require sources to comply with ERMS paperwork requirements, despite ERMS providing no additional emissions reductions, and to do so contrary to their reasonable expectations.

In its initial proposal to the Board on February 22, 2018, the Illinois Environmental Protection Agency (IEPA) noted that, because "[o]zone typically forms in the hotter, sunnier days of the year, [] ERMS addresses the time period of May 1 through September 30, known as the 'seasonal allotment period' or 'season.'" TSD at 1. IEPA's witness, who has been involved with ERMS since its inception, testified that "[e]xtremely little activity takes place in ERMS during the seasonal allotment period. Activity increases during the reconciliation period, which runs October 1 through December 31, during which the ERMS seasonal reports are due. Hardly any trades of ATUs [allotment trading units] for purposes of expected exceedances are performed until mid-December." IEPA Test. at 2-3. IEPA chose a "sunset" date of April 30th to signify that compliance obligations ended with the preceding ERMS season.

Responding to the Board, IEPA testified that while preparing its rulemaking proposal, IEPA discussed it with ERMS participants and presented it to industry groups. 5/10/18 Transcript at 24-25. The Board later provided ERMS participants with a summary of IEPA's proposal, as well as notice of the two public hearings and opportunities to submit comments. Based on these communications, the Board believes that ERMS sources are very likely to recognize the proposed sunset date.

It is a later "sunset" that, from a practical perspective, would impose retroactive obligations. A later date would burden ERMS sources with outdated requirements that do not

provide emissions reductions beyond more recent regulations. IEPA acknowledged that the cost of complying with these ERMS requirements varies among ERMS sources and that total compliance costs are not specifically known. However, the “sunset” would reduce IEPA’s administrative costs by \$36,800 per year. IEPA Cmts., Attachment 2. These expenditures clearly outweigh zero, the current environmental benefit from ERMS.

The Board assures JCAR that it has carefully considered JCAR’s first objection. Based on the dates of the ozone season, the timing of ERMS compliance activities, communications with ERMS participants, and the disproportionate cost of continued compliance with ERMS requirements, the Board does not believe that its proposal sets an inappropriate “sunset” date. Accordingly, the Board declines to modify or withdraw its proposal on this basis.

Second, JCAR also objected to “[I]EPA’s implementation of the policy stated in this rulemaking prior to adoption of the rulemaking by PCB.” The Board responds only for itself and declines to modify or withdraw its proposal on this basis. However, the Board placed JCAR’s objection on its website where it is publicly available for IEPA to review.



Katie Papadimitriu, Chairman

December 6, 2018

Agency: Pollution Control Board
Heading of Part: Emissions Reduction Market System
Code Citation: 35 Ill. Adm. Code 205
Register Citation: 42 Ill. Reg. 6572 (Apr. 13, 2018)

Agency Response to Joint Committee Recommendation:

At its meeting on November 13, 2018, the Joint Committee on Administrative Rules (JCAR) considered the Board's second-notice proposal to adopt a "sunset" of the Emissions Reduction Market System (ERMS). JCAR "recommends that, if PCB and [I]EPA believe this program is no longer warranted, they should seek repeal of Section 9.8 of the Environmental Protection Act [415 ILCS 5], which requires [I]EPA to design and carry out an emissions reductions market program."

As required by Section 9.8 of the Environmental Protection Act (Act), the Illinois Environmental Protection Act (IEPA) designed an emissions market system. 415 ILCS 5/9.8(b) (2016). IEPA proposed it to the Board, which adopted it as ERMS. Emissions Reduction Market System Adoption of 35 Ill. Adm. Code 205, R97-13 (Nov. 20, 1997). IEPA has implemented the program since it was adopted.

The rulemaking record before the Board in R18-22 establishes that ERMS no longer provides emissions reductions beyond those provided by more recent federal and State regulations required under the Clean Air Act (CAA). These "command and control" regulations provide the emissions reductions required by the CAA and meet its requirement of making "reasonable further progress" toward attaining the ozone air quality standard. TSD at A-1 to A-17; *see* 42 U.S.C. § 7511a; 5/10/18 Transcript at 13-14.

Section 9.8(c)(2) of the Act requires that the Board's ERMS rules include provisions assuring "that emissions reductions under the market system *will not be mandated unless it is necessary* for the attainment and maintenance of the National Ambient Air Quality Standard [NAAQS] for ozone in the Chicago nonattainment area, as required of this State by applicable federal law or regulation." 415 ILCS 5/9.8(c)(2) (emphasis added). The Board's proposal meets this requirement by "sunsetting" ERMS applicability to sources.

Although the ERMS rules are not necessary to attain and maintain the current NAAQS for ozone, Section 9.8 does not now require its own repeal under these circumstances. Additional emissions reductions may become necessary to meet future CAA requirements. If those reductions could be achieved through ERMS, then Section 9.8(c) lists factors for IEPA to consider when proposing a system, and rules adopted by the Board must include the provisions specified in Section 9.8(c)(1) through (c)(7).

While the Board has carefully considered JCAR's recommendation, it respectfully declines for the reasons above to seek repeal of Section 9.8 of the Act. The Board notes that JCAR's recommendation is also directed to IEPA. The Board responds only for itself, but it placed JCAR's recommendation on its website where it is publicly available for IEPA to review.

A handwritten signature in black ink, appearing to read "Katie Papadimitriu". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping tail at the end.

Katie Papadimitriu, Chairman