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January 3, 2019

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POLLUTION CONTROL BOARD
DON BROWN
100 W RANDOLPH ST
STE 11-500
CHICAGO, IL 60601

STATE OF ILLINOIS
Pollution Control Board

Dear DON BROWN

Your rules Listed below met our codification standards and have been published in Volume 43, Issue 1 of the Illinois Register, dated 1/4/2019.

ADOPTED RULES

Emissions Reduction Market System 35 Ill. Adm. Code 205 Point of Contact: Nancy Hoepfner	441
Hazardous Waste Management System: General 35 Ill. Adm. Code 720 Point of Contact: Mike McCambridge	446
Identification and Listing of Hazardous Waste 35 Ill. Adm. Code 721 Point of Contact: Mike McCambridge	496
Standards Applicable to Generators of Hazardous Waste 35 Ill. Adm. Code 722 Point of Contact: Mike McCambridge	563
Standards Applicable to Transporters of Hazardous Waste 35 Ill. Adm. Code 723 Point of Contact: Mike McCambridge	585
Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities 35 Ill. Adm. Code 724 Point of Contact: Mike McCambridge	601

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal

Index Department - Administrative Code Division - 111 East Monroe Springfield, IL 62756



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Facilities		
35 Ill. Adm. Code 725		634
Point of Contact: Mike McCambridge		
Standards for the Management of Used Oil		
35 Ill. Adm. Code 739		667
Point of Contact: Mike McCambridge		
AGENCY REFUSAL IN RESPONSE TO A STATEMENT OF OBJECTION		
Emissions Reduction Market System		
35 Ill. Adm. Code 205		818
Point of Contact: Nancy Hoepfner		
REGULATORY AGENDA		
Definitions and General Provisions		
35 Ill. Adm. Code 211		870
Point of Contact: Nancy Hoepfner		

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF REFUSAL TO MEET THE OBJECTION AND RECOMMENDATION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Emissions Reduction Market System
- 2) Code Citation: 35 Ill. Adm. Code 205
- 3) Section Number: Action:
205.115 New section
- 4) Date Notice of Proposed Rules Published in the Register: 42 Ill. Reg. 6572; April 13, 2018
- 5) Date JCAR Statements of Objection and Recommendation Published in the Register: 42 Ill. Reg. 21472, 21475; November 30, 2018
- 6) Summary of Action Taken by the Agency: The Illinois Pollution Control Board (Board) respectfully declined to withdraw or modify its rule in response to JCAR's Statement of Objection. The Board also respectfully declined to follow JCAR's Statement of Recommendation. Below, the Board summarizes its reasoning, first for the Board's action on JCAR's Objection and then for the Board's action on JCAR's Recommendation.

In this rulemaking (Board docket R18-22), the Board adopted an April 30, 2018 "sunset" of the Emissions Reduction Market System (ERMS). In its Statement of Objection, JCAR states that it objected to this proposal "because it sets a retroactive sunset date for the system that predates any possible adoption date for this rulemaking." JCAR's Statement of Objection further states that JCAR objected to the Illinois Environmental Protection Agency's "implementation of the policy stated in this rulemaking prior to adoption of the rulemaking by [the Board]."

The Board found that the "sunset" would not impose retroactive obligations on ERMS sources. The rulemaking record 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 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

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POLLUTION CONTROL BOARD

NOTICE OF REFUSAL TO MEET THE OBJECTION AND RECOMMENDATION OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

the ‘seasonal allotment period’ or ‘season.’” 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 proposed 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. 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 found that ERMS sources are very likely to recognize the sunset date.

The Board found that, from a practical perspective, a later “sunset” 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. These expenditures clearly outweigh zero, the current environmental benefit from ERMS.

The Board assured JCAR that it carefully considered JCAR’s Objection as to “retroactivity.” However, 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 could not find that its proposal sets an inappropriate “sunset” date. Accordingly, the Board declined to modify or withdraw its rule on this basis.

As to JCAR’s Objection based on IEPA “implementation,” the Board emphasized that it responded only for itself and declined to modify or withdraw its rule on this basis. However, the Board noted that it placed JCAR’s Objection on the Board’s website where it is publicly available for IEPA to review.

In its Recommendation, JCAR “recommends that, if [the Board] and [I]EPA believe this program is no longer warranted, they should seek repeal of Section 9.8 of the

ILLINOIS REGISTER

POLLUTION CONTROL BOARD

NOTICE OF REFUSAL TO MEET THE OBJECTION AND RECOMMENDATION OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Environmental Protection Act [415 ILCS 5], which requires [I]EPA to design and carry out an emissions reductions market program.”

The Board observed that, as required by Section 9.8 of the Environmental Protection Act (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.

As noted above, the rulemaking record 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.

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) (2016) (emphasis added). The Board’s rules meet this requirement by “sunsetting” ERMS applicability to sources.

The Board found that although the ERMS rules are not necessary to attain and maintain the current NAAQS for ozone, Section 9.8 of the Act 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).

The Board assured JCAR that it carefully considered JCAR’s Recommendation but, for the reasons above, the Board respectfully declined to seek repeal of Section 9.8 of the Act. As JCAR’s Recommendation is also directed to IEPA, the Board noted that it responded only for itself and that it placed JCAR’s Recommendation on the Board’s website where it is publicly available for IEPA to review.