ILLINOIS POLLUTION CONTROL BOARD
June 2, 1983

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| IN THE MATTER OF: | ) | |
| | ) | R81-20 |
| ALTERNATIVE CONTROL STRATEGIES, FINAL RULE (DOCKET B) | ) | (Docket B) |

PROPOSED RULE. FIRST NOTICE.

PROPOSED OPINION AND ORDER OF THE BOARD (by J. Anderson):

The Final Rule in this matter is hereby divided into two dockets to enable the Board to take final action on the regulations prescribing the Alternative Control Strategies (ACS) permit program, while considering an amendment to Section 202.145 of those regulations. Docket A contains the Final Rule in this matter in the exact form in which it was submitted to the Joint Committee on Administrative Rules and published in the Board's Second Notice order of December 2, 1982. Under a separate Opinion and Order the Board is today ordering that Docket A be adopted and filed with the Secretary of State.

This docket, entitled "Docket B", contains a Board proposal to amend Section 202.145 of Docket A, after it is filed with the Secretary of State. This proposal is made in response to some of the concerns raised in the combined economic and technical hearings held on March 7 and 11, 1983. It will be published in the Illinois Register in accordance with Section 5.1 of the Administrative Procedure Act. In the Interim and Final Rule proceedings, the Board received testimony and comments on the appropriateness of using the "useful life" of an emission reduction credit (ERC) as a limit on its duration, and on prescribing a five year maximum life for ERC's generated by emission source shutdowns.* At this time the Board solicits public comment on the more flexible approach to determining "useful life" which is proposed in this docket. Public comment will be accepted on this proposal up to and including August 19, 1983.

The proposed amendment deletes the five year maximum life for an ERC generated by a shutdown and adds a new subsection (b) which mandates that the Agency determine a specific useful life for each shutdown emission source which contributes an emission reduction to an ACS. Subsection (b) also mandates that the Agency include consideration of certain factors bearing upon

*The history of the development of the "useful life" and "5 year limitation" provisions can be reviewed in the Board's May 13, 1982 Opinion and Order on the Interim Rule and December 2, 1982 Opinion and Order on the Final Rule.

"useful life" in making its determination. It is the Board's intention to insure that ambiguity or indefiniteness as to the lifetime of an ERC be resolved before an ACS permit is issued by a numerical specification of the duration of any shutdown ERC used in the ACS. It is also the Board's intention to provide some guidance as to the minimum demonstration that the ACS applicant must make with regard to useful life.

The Board agrees with the testimony given in the March 7 and 11, 1983 hearing (R. 874-878, 892-896, 904-914, 941-943), and public comment received thereafter (P.C. 45), which support the "useful life" provision, but recommend deletion of any "across-the-board", fixed maximum life in the rule. In light of these comments, as well as the addendum to the Economic Impact Study (EcIS) (Ex. 1 Econ. Hearings) presented at the March 11, 1983 hearing, the Board agrees that any specification in the rule of a maximum "useful life" would be arbitrary and inequitable. The addendum to the EcIS, Part B of which focused on the impact of the five year limitation in the useful life provision, concluded that the percent of polluting equipment with a remaining useful life of five years or less ranged from 0.5 to 48.9% depending on the industrial class involved. The addendum concludes that substantial cost savings would be foregone for some industries by use of the 5 year maximum life without a corresponding environmental benefit. Since it is the function of this provision and these rules in general to insure "equivalence", the Board concludes that it is inappropriate to build into this rule this type of inequity and disincentive to use of an ACS.

The particular factors which the proposed amendment directs the Agency to consider were developed by the Board from points raised in the most recent testimony. For example, witnesses pointed out that the age of a piece of equipment alone may not be determinative of its operational remaining life. Thus, among other things, this subsection directs consideration of the level of use received by and wear to the principle components as well as operating efficiency. The Board believes another relevant consideration is the actual, documented operational lifetime of other functionally or catagorically similar pieces of equipment. Given this information, the Agency can compare the useful life proposed by an ACS applicant to a "norm" for the same type of equipment. The Board particularly solicits comments on the adequacy of the factors proposed.

## ORDER

Section 202.145 Duration

a) A permit containing an ACS shall be issued for no longer than five years, or for such shorter period as the Agency may specify as necessary for periodic review of the ACS or to accomplish the purposes of the Act or

of this Chapter. However, an ACS permit may not be issued for a period of time which is greater than the useful life of an emission source which contributes an emission reduction to the ACS. The burden of proving the useful life of the emission source is on the applicant. ~~For the purpose of this section, a shutdown emission source shall be deemed to have a useful life of no more than five years.~~

b) Prior to the issuance of an ACS permit, the Agency shall consider all factors which it reasonably construes as bearing upon the useful life of an emission source, and shall determine a specific useful life for each shutdown emission source which contributes an emission reduction to an ACS. Factors which the Agency considers shall include the following:

1) The anticipated useful life of the principle components of the emission source upon purchase;

2) The age of the principle components of the emission source;

3) The level of use received by and wear to the principle components of the emission source;

4) The operating efficiency of the emission source at the present time; and

5) The demonstrated useful life of emission sources of the same category or functional type.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 2ND day of June, 1983 by a vote of 4-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board