

ILLINOIS POLLUTION CONTROL BOARD
May 24, 1990

IN THE MATTER OF:)
)
APPLICATION OF CALIFORNIA) R89-17(A) & (B)
MOTOR VEHICLE CONTROL PROGRAM) (Rulemaking)
IN ILLINOIS)

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board for a determination of whether the Board should direct the Department of Energy and Natural Resources (ENR) to prepare an economic impact study (EcIS) on this proposal. On October 18, 1989, the Board opened this docket to gather information on whether Illinois should adopt the California motor vehicle control program. An inquiry hearing was held on December 12, 1989, and written public comments were accepted through January 5, 1990. On April 12, 1990, the Board proposed, for First Notice, that portions of the California program be adopted in Illinois.

Section 27 of the Environmental Protection Act (Act) (Ill.Rev.Stat. 1987 and 1988 Supp., ch. 111 1/2, par. 1027) requires that the Board determine, within 60 days of accepting a regulatory proposal for hearing, whether an EcIS should be prepared by ENR. Pursuant to Section 27, the Board accepted public comments on the issue until May 3, 1990--21 days after the Board proposed the rules for First Notice.¹ The Board received two comments on the advisability of ordering an EcIS: one from the Illinois Environmental Protection Agency (Agency) (P.C. 9) and one from ENR (P.C. 10). Both comments were filed on May 3, 1990.

In its comments, the Agency does not specifically state whether it believes that an EcIS should be prepared on this proposal. However, the Agency comments address the scope of an EcIS and list several issues which the Agency believes should be included in an EcIS. Among other things, the Agency recommends that an EcIS evaluate the differences between the California program, the program which might be implemented on a federal basis

¹ The Board finds that April 12, the date upon which the Board proposed the rules for First Notice, is equivalent in this proceeding to the date upon which the proposal was accepted for hearing. The April 12 date is the point at which the Board decided, for the first time, to proceed with the docket as a proposal for rulemaking rather than simply an inquiry proceeding. Thus, the Board must make its EcIS determination within 60 days of April 12.

if pending amendments to the Clean Air Act (CAA) are passed and signed into law,² and the proposal in this docket.³ The Agency believes that these three programs should be evaluated for costs and environmental impacts. Additionally, the Agency recommends that an EcIS should include identification of all affected "sources", study of the variety of costs associated with the proposed rules, and further, detailed study of the environmental impact of the proposal in Illinois. The Agency also notes that the Board has established two subdockets in this proposal, which differ as to when 100% compliance with the rules would be required. Thus, the Agency recommends that an EcIS assess any increased cost of the elimination of a phase-in period.

In contrast to the Agency's comments, ENR states that a formal EcIS is not appropriate for this proceeding. This statement is based upon ENR's contention that the proposal is "ill-suited" to examination through an EcIS due to "deficiencies" in the proposal. ENR claims that the proposal contains scant economic information, carries no list of affected sources, and no discussion of potential impacts. ENR contends that the Board has not followed the Act or its own procedural rules, and that it is premature to undertake an EcIS until further information is forthcoming. Finally, ENR maintains that it is willing to work with any prospective proponent of a regulation to develop the required information, before a proposal is filed, but does not believe that an EcIS should provide information which should be provided when the proposal is filed.

The Board disagrees with ENR's statements that this proposal is not suitable for an EcIS due to "deficiencies" in the proposal. First, ENR does not have authority to make determinations as to the adequacy of any regulatory proposal filed with the Board. The Act gives the Board authority to determine the adequacy of a regulatory proposal. (See Sections 27 and 28 of the Act.) Second, the Board finds that the record in this docket is sufficient to merit consideration as a proposal for rulemaking. An inquiry hearing was held in December, and the Board received a number of exhibits and written comments. This is not a case where the only information before the Board is the bare proposal. There is quite a bit of information in this record, and the Board believes that the proposal is clearly adequate to merit further consideration and

² This program will be referred to as the "CAA amendments". The Board notes that the pending CAA amendments passed the U.S. House of Representatives last night. The Senate and House bills must be reconciled, and sent to the President for signature. Therefore, it is possible that the bills may not become law.

³ The proposal in this docket will be referred to as the "Illinois proposal".

exploration.⁴ Third, the Board rejects ENR's contention that the Board has not followed the Act or the procedural rules in this docket. The Act requires the proponent to "describe, to the extent reasonably practicable, the universe of affected sources and facilities and the economic impact of the rule." This requirement is "to aid the Board in determining whether an economic impact study is needed and to assist the public in determining which facilities will be impacted." (Section 27(a) of the Act.) The Board finds that the record in this docket clearly fulfills these two purposes. Finally, the Board was unaware that ENR has a policy of assisting in developing information only before filing of a proposal.

After consideration of the record in this proceeding, the comments received from the Agency and ENR, and the factors set forth in Section 27(a) of the Act, the Board determines that an EcIS should be prepared. The Board recognizes that this proposal may have far-reaching effects, both economic and environmental, and believes that these effects need further study so that the Board may make an informed decision on the proposal. Without limiting the scope of the EcIS, the Board identifies the following issues to be addressed in the study:

1. The environmental benefits and economic costs of adoption of the Illinois proposal, as compared with the status quo, the California program and the pending CAA amendments;
2. Identification of and consideration of the effect upon all affected classes of "sources and facilities", including but not limited to consumers, vehicle manufacturers, dealers, rental and leasing businesses, parts manufacturers, and other supporting services to parts and vehicle manufacturing;
3. The economic costs of the proposal, including costs to the consumer, manufacturers, dealers, rental and leasing businesses, and the State of Illinois;
4. The environmental impact of the proposal in Illinois; and
5. The costs and benefits of proceeding with Docket B, which requires 100% compliance in 1993, if the CAA is amended to establish the California standards nationwide.

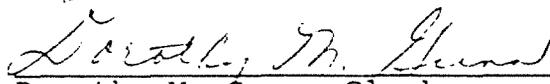
⁴ For example, there is economic information in Exhibits 2A and 9 and in P.C. 6. There was also oral testimony on economic issues at the December 12, 1989 inquiry hearing. Exhibits 2A, 6, 7, and 9, as well as P.C. 4, contain extensive technical information. This is not an exhaustive listing of all information in the record.

ENR may wish to refer to the comments filed by the Agency (P.C. 9) for more specific ideas on other aspects which may be covered in the EcIS.

Pursuant to Section 27(a) of the Act, the Board directs ENR to prepare an EcIS on this proposal, including but not limited to the issues listed above. The Board requests that the EcIS be delivered on or before January 15, 1991, so that the Board may proceed with this docket in a timely manner. No further hearings will be held on this proposal until after the EcIS is submitted, at which time the Board will hold at least two hearings on the merits and the economic impact of the proposal. The Board notes that this proposal is currently in First Notice, and that the public comment period runs until June 25, 1990. The Board will extend this comment period, so that interested persons may submit any information which may aid in the preparation of the EcIS. Written comments may be submitted until August 1, 1990. Copies of those comments should be sent directly to ENR and the Agency.

IT IS SO ORDERED.

I, Dorothy M. Gunn, hereby certify that the above Order was adopted on the 24th day of May, 1990, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board