ILLINOIS POLLUTION CONTROL BOARD
January 7, 1993

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

Proposed Rule. Dismissal Order.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

In the instant proceeding the Board has, since late 1989, investigated whether it would be warranted for the State of Illinois to adopt, as an alternative to federal regulations, the motor vehicle emissions control program developed by the State of California.

Motor vehicle emissions contain a number of pollutants. Thus, their control is a matter germane to both environmental quality and human health. The issue before the Board is how to most practically achieve this control.

California, spurred by its severe air quality problems, historically has needed stricter vehicle emission controls than has the rest of the country. In recognition thereof the Clean Air Act (CAA) has provided for a dual set of standards, one for California and one for the remaining 49 states. The CAA does provide, however, that individual states may choose to adopt the more stringent California standards as an alternative to the federal standards. (42 USC §§7507 and 7543(b).)

Upon due deliberation, the Board determines that at this time the federal regulations of the Clean Air Act Amendments of 1990 (CAAA) constitute the vehicle emissions program most appropriate for Illinois. Accordingly, the Board today takes no action on the California program and dismisses this proceeding.

BACKGROUND

This docket was opened on October 18, 1989 for the purpose of exploring motor vehicle emission control programs, and in particular the program of the State of California[1]. An initial

[1] The California agency responsible for the promulgation of that state's vehicle emissions program is the California Air Resources Board. It is generally known by the acronym "CARB".

inquiry hearing was held on December 12, 1989. Based upon the record of that hearing and written public comment, the Board on April 12, 1990 proposed for first notice[2] and further consideration that those portions of the California program known as Tier I standards be adopted in Illinois.

During the first notice tenure of the Tier I proposal, the United States Congress began serious consideration of the adoption of California Tier I standards as nationwide requirements under the CAAA. This action was indeed subsequently taken and on November 15, 1990 President Bush signed the CAAA into law as P.L. 101-549. In pertinent part the CAAA provide that a version of the California Tier I standards become the federal standards, beginning with model year 1994[3]. (42 USC §7521.)

The federal adoption of the Tier I standards obviated any need for the Board to independently adopt them. Accordingly, the Board proceeded to dismiss those portions of its investigation dealing with Tier I matters[4].

However, during the pendency of the Tier I matters before Congress, the issue arose as to whether Illinois might adopt portions of the California program that go beyond the Tier I program. To investigate this possibility, the Board created the instant subdocket, R89-17(C). It is this subdocket that the Board today dismisses, thereby dismissing the last of its considerations under R89-17.

SUBSTANCE AND PROCEDURAL HISTORY OF R89-17(C)

The Board in the various stages of its investigation of the California motor vehicle program has sought to stimulate discussion and investigation by tendering concrete regulatory

[2] Publication occurred in the Illinois Register on May 11, 1990, at 14 Ill. Reg. 6977. The material was presented in two subdockets, R89-17(A) and R89-17(B).

[3] Principal features of the Tier I standards are the establishment of emission limitations for non-methane hydrocarbons, the lowering of allowable emissions of nitrogen oxides, and modification of emission standards for carbon monozide and particul te matter. The CAAA also provide for "Tier II" standards, which if adopted would provide for modified controls for model year 2004 and beyond.

[4] In the Matter of: Application of California Motor Vehicle Control Program in Illinois, R89-17(A & B), February 7, 1991, 118 PCB 327.

proposals for consideration. This was the case with the Tier I proposals, as well as with the trans-Tier I matters considered in R87-17(C).

In is initial version[5], the Board offered a proposal that would have made the standards established by California for emission standards, diagnostic and malfunction systems, and warranty requirements the standards also required in Illinois. In addition, the proposal would have limited vehicle sales and registration in Illinois to only those vehicles that complied with these "California standards" in effect at the time of the manufacture of the individual vehicle.

Public hearing on the initial version of the R89-17(C) proposal was held on July 23, 1991[6]. Based on this record and the record developed during public comment, the Board offered a second version[7] of a trans-Tier I regulatory proposal. This revised proposal focused on the California Low Emission Vehicle (LEV) Program. The proposed rules included specific emission standards and other requirements, as opposed to simply requiring the sale of vehicles that conform to California standards.

The California LEV program is comparatively new, having been first adopted in California in September 1990. The centerpiece of the program is the designation of vehicles according to their emission levels, and the required progressive phase-in of the lower emission vehicles[8]. In California the phase-in is to begin with model-year 1994 vehicles and extend through 2003; any state adopting the California LEV program is required by the CAA to make the adoption two years prior to the beginning model year.

[5] In the Matter of: Application of California Motor Vehicle Control Program in Illinois, R89-17(C), October 11, 1990, 115 PCB 353. Publication occurred in the Illinois Register on November 2, 1990, at 14 Ill.Reg. 17812.

[6] At several stages in the overall R89-17 proceeding the pace at which these investigatory hearings could be attended to was governed by a limited hearing budget and the priority necessarily attendant upon required rulemakings and contested case matters. This circumstance determined the timing of this first R87-17(C) hearing.

[7] In the Matter of: Application of California Motor Vehicle Control Program in Illinois, R89-17(C), November 21, 1991, 127 PCB 273. First notice publication occurred in the Illinois Register on December 13, 1991, at 15 Ill.Reg. 17863.

[8] LEV vehicles include the transitional low emission vehicle (TLEV), the ultra-low emission vehicle (ULEV), and zero emission vehicle (ZEV).

On January 9, 1992, the Board denied a request that it order the preparation of an economic impact study (EcIS), but directed the hearing officer to schedule further hearings on the LEV proposal. The Board subsequently noted, on February 6, 1992, that a lack of hearing funds forced a delay of further proceedings in this docket. Those additional hearings were then held in summer 1992. The July 21 hearing was devoted to the merits of the proposal, and the August 26 hearing was limited to testimony on the economic issues raised by the proposal[9]. A written public comment period followed the hearings.

DISCUSSION

The instant proceeding has generated a great deal of public interest. Testimony and public comment has been provided by the potentially regulated community, including the Illinois Petroleum Council, various oil companies, the Engine Manufacturers Association, the Motor Vehicle Manufacturers Association, the Association of International Automobile Manufacturers, various automobile and truck manufacturing companies, and the Illinois New Car and Truck Dealers Association; by the public interest community, including the American Lung Association, the Chicago Lung Association, and the Illinois Chapter of the Sierra Club; and by units of government, including Department of Environmental Conservation of the State of New York, the Attorney General of the State of Illinois, the City of Chicago, and the Illinois Environmental Protection Agency (Agency).

Most of the testimony, evidence and comments, with the exception of those from the public interest community and the State of New York, urges the Board not to adopt any additional elements of the California program at this time, or at the minimum to first resolve some issue of concern. Among issues cited are uncertainties associated with availability of required technology, effectiveness in reducing harmful emissions, fuel implications, and economic costs. There are also unanswered questions regarding the appropriateness of California air standards to Illinois geography and climate, whether up-dating of the California standards could be accomplished short of delegating rulemaking authority to California, and whether,

[9] On September 18, 1992, the Illinois Environmental Protection Agency filed a motion to correct the transcript of the August 26, 1992 hearing. The Agency contends that remarks on pages 299 and 300 attributed to Darwin J. Burkhart of the Agency were not made by Mr. Burkhart, and should probably be attributed to Ronald Burke of the Chicago Lung Association. The Agency attached Mr. Burkhart's affidavit in support of its motion. The motion to correct the August 26, 1992 transcript is granted.

absent other elements of the California program, the LEV program alone would be sufficient to meet CAAA requirements. Finally, there are a variety of questions raised regarding problems likely to arise if Illinois were the only state in the region to require California standards, including questions regarding enforcement of the standards and impairment of competitiveness of Illinois businesses.

The Board will not attempt to recite the specifics of all of these arguments here. It is not in fact any one argument that persuades the Board of the correctness of today's action, but rather their sum.

Neither will the Board attempt to summarize the perspective and observations of all the participants in the quite extensive record in this proceeding; interested persons are directed to the record itself. There are a special few, however, which bear note.

Among these is the perspective of the Illinois Environmental Protection Agency. The Agency is the lead Illinois agency responsible for analyzing and assessing the quality of the State's air environment, and for developing and proposing to the Board those regulatory strategies that are necessary to restore, maintain, and enhance the purity of the air of this state. The Agency thus has a broad perspective on the mix of programs and regulations that will most effectively achieve a quality air environment.

The Agency has consistently opposed adoption of a California standards program in Illinois, at this time, for a range of reasons.

As regards the ability of the California program to help Illinois achieve volatile organic material (VOM) emissions reductions, the Agency concludes that "when placed in the larger context of the emission reductions mandated by the Clean Air Act, the Agency believes that the projected benefits provide marginal progress toward the required goals" (Exh. 44 at 3). VOM reductions are the principal *raison d'etre* for the California standards.

As regards the economic feasibility of adopting the California program, in a report conducted in cooperation with the Illinois Department of Energy and Natural Resources (DENR) the Agency concludes:

> The Agency recommends that the Board not adopt the California standards at this time. Since much of the technology necessary to implement the program is not yet in production, much less proven, it is difficult to project with great accuracy either the costs or the

> emission reduction benefits to the State. However, reasonable estimates of potential emission reductions suggest that the environmental benefit will be slight in comparison to the economic and administrative burden associated with this program. As technological advances and program development proceed in California and in the Northeast states, the California LEV Program may become a more justifiable component of Illinois' air quality strategy, but it is not justified at present. (The Low Emission Vehicle Program in Illinois, Exh. 45 at xiii.)

In its most recent comments the Agency observes:

> The Agency reaffirms its recommendation that the Board not adopt the California Motor Vehicle Control Program at this time. Despite attempts to fully evaluate the program, many uncertainties remain. The program requires technological innovations that are not yet in production, much less time-tested. Estimates vary widely for emission reductions, cost per ton of emission reduction, additional cost per vehicle, fuel requirements and costs, and costs of implementation and administration. Viewed in this context, the benefits attributable to the adoption of the California standards are marginal when compared with the benefits to be obtained from the Federal Tier I standards and the Federal Tier II standards, if the Tier II standards are implemented in model year 2004. (PC #59 at 1-2.)

The Agency also concludes:

> The benefits to the State of Illinois from the adoption of the California standards are marginal given the facts that 1) the program would have to be implemented and administered state-wide while the primary benefits are restricted to the ozone nonattainment areas and 2) there are a large number of uncertainties surrounding many elements of the program. Therefore, the Agency concludes that the Board should not adopt the California Motor Vehicle Control Program at this time. (PC #59 at 15-16.)

Chicago is among the areas of the State with the most severe air quality problems. Therefore, the City of Chicago has also extensively involved itself in assessing control strategies. As regards the California standards, the City of Chicago observes:

> The evidence shows that there are significant uncertainties with respect to the California Program's technical feasibility, the cost of administering the Program, and the level of emission reduction that is

> expected to be achieved. Furthermore, there are serious concerns with the legality of the rule, as proposed. Accordingly ... the City supports the conclusion of the Illinois Environmental Protection Agency (IEPA) that the adoption of the rule is not justified at this time. (PC #57 at 1.)

Those groups that argue for the adoption now of the California program believe that the remaining uncertainties of the program do not rise to the level of fatal flaws. They contend also that the various economic analyses, including that jointly conducted by the Agency and DENR (Exh. 45), exaggerate the costs of compliance.

As regards the matter of where we proceed from here, the Board finds that it shares the final perspective of the Agency (PC #59 at 16), which we repeat here with our additions in brackets:

> The Agency's recommendation [and the Board's decision today] does not foreclose the State's options, however, because states may adopt the California standards at any time so long as it is done at least two years before the first affected model year. As California proceeds with the implementation of its program and manufacturers develop their technologies and production operations, currently unresolved issues will be addressed. In addition, the Agency [and the Board] will have a better opportunity to assess the emission reductions achievable from the programs mandated by the CAAA and to determine the extent to which addition reductions will be necessary. While the basic emission reduction potential of the California program may not change significantly, economic and program administration implications certainly will become less speculative than they are now. If Illinois later decides that further emission reductions are necessary, it can turn once again to the California program and proceed to adoption with much greater certainty than is now possible.

ORDER

The Board's rulemaking proceeding R89-17(C) is hereby dismissed.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 7th day of January, 1993, by a vote of 4-1.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board