

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R18-22
PART 205, EMISSIONS REDUCTION) (Rulemaking-Air)
MARKET SYSTEM)

NOTICE

To: Tim Fox
Hearing Officer
Illinois Pollution Control Board
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the ILLNOIS ENVIRONMENTAL PROTECTION AGENCY'S POST-HEARING COMMENTS AND RESPONSE TO THE ILLINOIS POLLUTION CONTROL BOARD QUESTIONS REGARDING THE SUNSET OF THE EMISSIONS REDUCTION MARKET SYSTEM and the MOTION TO CORRECT TRANSCRIPT, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Annet Godiksen
Annet Godiksen
Assistant Counsel
Division of Legal Counsel

DATED: July 3, 2018

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Springfield, IL 62794-9276
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
AMENDMENTS TO 35 ILL. ADM. CODE)	R18-22
PART 205, EMISSIONS REDUCTION)	(Rulemaking-Air)
MARKET SYSTEM)	

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S POST-HEARING
COMMENTS AND RESPONSE TO THE ILLINOIS POLLUTION CONTROL
BOARD'S QUESTIONS REGARDING THE SUNSET OF THE EMISSIONS
REDUCTION MARKET SYSTEM**

The Illinois Environmental Protection Agency ("Agency" or "Illinois EPA") submits these post-hearing comments and response to questions for the above-titled matter to the Illinois Pollution Control Board ("Board"). During the hearing held on June 7, 2018, the Board requested that the Agency respond regarding specific aspects of the Agency's proposal to sunset the Emissions Reduction Market System ("ERMS"). The Illinois EPA comments and responds as follows:

I. POST-HEARING COMMENTS

On June 7, 2018, at the second hearing in this matter, the Illinois Environmental Regulatory Group ("IERG") requested that the Board delay the sunset date of the ERMS program to the earlier of 2021 or the date the State Implementation Plan ("SIP") submittal is approved by USEPA. It indicated that, until USEPA approves the sunset, "ERMS requirements will still be enforceable as SIP requirements" and IERG sources do not want to be out of compliance with the SIP. (June 7, 2018, Tr. at 14).

As outlined in testimony at hearing, while the Agency does not dispute that ERMS requirements continue to be federally-enforceable as a legal matter until approved by the United States Environmental Protection Agency ("USEPA") as a SIP revision, the Illinois EPA strongly

opposes IERG's request to delay sunset of ERMS requirements at the State level and IERG's rationalization for doing so, for numerous reasons. Ultimately, IERG's proposal to address this issue with relation to the current rulemaking ignores the broad, untenable ramifications its position could have on rulemakings and regulatory relief proceedings moving forward, not to mention the unreasonable effect it would have on ERMS participants continuing to expend resources to comply with an unnecessary rule.

SIP Gap in General

The period of time between a state's adoption of a regulation and federal approval of that regulation as a SIP revision is referred to as the "SIP gap." It is not a new concept, in Illinois or other states. It has existed since the inception of SIPs and has been acknowledged by USEPA and courts for decades. It exists every time the State adopts a rule that will be relied upon in Illinois' SIP, amends an existing federally-approved rule, or grants regulatory relief from a federally-approved rule. The SIP gap is the consequence of the state/federal cooperative structure of environmental regulation established by the Clean Air Act. Absent a change to this structure, a SIP gap will arise each time one of the regulatory scenarios noted above occurs.

Problems with IERG's Request and Reasoning

First, IERG's stated concern for noncompliance with the SIP during the period of time between Board adoption of the ERMS sunset and federal approval is largely theoretical. As the Agency testified at hearing, "To the Agency's knowledge, neither USEPA nor third parties have ever pursued an Illinois source for failure to comply with a rule that has been amended at the State level and [unofficially] pre-approved by USEPA. Further, to the Agency's knowledge, neither USEPA nor third parties have ever pursued an Illinois source based on noncompliance

with ERMS.”¹ (June 7, 2018, Tr. at 39). As explained in the Agency’s rulemaking proposal, USEPA has unofficially indicated its approval of the Agency’s proposed sunset. It is especially unlikely that USEPA or third parties would elect to enforce against a source for ERMS violations during the SIP gap period, as the ERMS program no longer provides environmental benefit. (See David Bloomberg’s testimony, May 10, 2018, Tr. at 31, 24 and the Illinois EPA’s response of May 17, 2018, at 2.) It would simply not be a productive use of resources to seek enforcement of an obsolete program, particularly one repealed at the State level.

Second, if the Board legitimizes IERG’s claim that the effective date of the sunset must be contemporaneous with USEPA’s formal approval of the related SIP change, it could have broad, negative ramifications on the Agency, the Board, and regulated sources. The Board’s ability to set date-certain compliance deadlines or grant immediate regulatory relief, as has been practiced for decades, could be adversely impacted. If the Board here finds that the State’s compliance deadline should match the date of federal approval, the same reasoning would arguably apply to all future repealers (whether they be repealers of whole regulatory Parts or just regulatory Sections or Subparts), sunsets, and any other rulemaking that revises existing regulatory requirements. The same reasoning would apply to regulatory relief proceedings as well; not only could the Board be adversely impacted, but this could of course negatively impact sources, particularly those in need of timely regulatory relief. Indeed, many regulatory actions and many Illinois sources could be affected, as the majority of air-related Board regulations are in Illinois’ SIP.

¹ While IERG implied at hearing that there may be ERMS-specific USEPA enforcement actions, the Agency is unable to identify any. The Agency identified only joint federal-State enforcement actions in which the State brought claims of noncompliance with ERMS as part of a larger enforcement action, but while USEPA could have joined those claims, it declined to do so. See, e.g., *United States v. Crane Composites, Inc.*, 08CV4735 (N. Dist. 2008); *United States v. East Balt. Commissary LLC*, 16C8301 (N. Dist. 2016).

Third, to the Agency's knowledge, IERG's concerns represent a very small percentage of sources subject to ERMS. The Agency's witness testified that there are approximately 180 ERMS sources in Illinois.² (June 7, 2018, Tr. at 40). In the days before the second hearing, IERG represented to the Agency that only two to three IERG members had expressed the concerns identified in IERG's testimony. While IERG declined to confirm this number for the Board at the hearing, the Agency assumes its representations to the Agency were accurate. (June 7, 2018, Tr. at 17). These concerned sources therefore constitute a very small percentage of the total number of sources subject to ERMS. Indeed, no ERMS source has expressed concerns directly to the Agency. Further, no ERMS source has tendered such a comment to the Board in this proceeding. Rather, there is a mere assertion lacking documentation by one organization, whose membership comprises a small percentage of the total number of ERMS sources, that suggests that some small portion of its membership may have a concern. Two to three sources' concerns with SIP noncompliance during the SIP gap, which carries with it a very low risk of practical, real-world ramifications for sources, is insufficient justification for subjecting approximately 177 other Illinois sources to obsolete environment regulatory requirements for an additional three years. It is also insufficient justification for diminishing the Board's authority to set date-certain effective dates and providing that authority instead to USEPA.

Finally, IERG's suggested language causes regulatory uncertainty, as there is no way of knowing when USEPA will approve the sunset into Illinois' SIP.³ (June 7, 2018, Tr. at 40-41).

² The 180-source count is the number of sources that were required to submit a seasonal report for 2017. It should be noted that the list previously provided to the Board is a historically inclusive list of all sources/contacts ever linked to the ERMS program. The list of sources in the Technical Support Document identifies sources that received or traded ATUs in 2016. This should explain the differences in the number of sources between the lists.

³ Under the Clean Air Act, USEPA has six months to find a SIP submittal complete and then 12 months in which to approve it. 42 USC Sec. 110(k). USEPA endeavors to meet these deadlines; however, SIP approvals of rules, grants of regulatory relief, air quality planning documents, etc., have not always occurred within these statutory timeframes.

IERG's proposed language is based on the speculation that the SIP will be approved by the beginning of the ozone season in 2021. IERG admitted at hearing though that SIP approval may not occur by that date, in which case IERG will again ask the Board to extend the sunset date (a change that would then have to be submitted to USEPA for approval *again*, sparking another round of waiting for USEPA to approve the SIP revision). (June 7, 2018, Tr. at 21, 23-24).

IERG's request should therefore be rejected.

Common Scenario with No State Solution

The scenario that now concerns IERG is one that has played out repeatedly for decades in Illinois and other states. There is *always* a period of time between Board or corresponding State adoption of a regulation and USEPA's approval, and there is almost always a State compliance deadline that pre-dates this approval.⁴ As the Illinois EPA explained at hearing, "[The SIP gap] exists every time the Board amends a rule, or grants regulatory relief from a rule, that is part of the State's [SIP]." (June 7, 2018, Tr. at 38-39).⁵ This is likewise true when the Board adopts a new rule that will be relied upon in Illinois' SIP.

At hearing, IERG incorrectly suggested that SIP gap issues are not as ubiquitous as the Agency has stated. IERG's representative implied that the same federal approvability standards applicable to rules do not apply to regulatory relief obtained by a source ("I'm aware of instances . . . where there is an outstanding legal question as to whether or not US EPA considers state-afforded regulatory relief to be binding for federal all purposes. So I think that is an outstanding

⁴ The Agency may support a contemporaneous State/federal effective date in some cases if there are special circumstances – for example, if such an effective date is required by the Environmental Protection Act, or the rule involves transitioning from a federally delegated program to a State program.

⁵ This is not the first Board rule to be repealed or sunset, and more specifically, it is not the first trading program to involve a SIP gap. For example, the Board adopted sunset provisions for the portion of the Nitrogen Oxide ("NOx") SIP Call Trading Program set forth in 35 Ill. Adm. Code 217.Subpart W in 2009, with a sunset date of 2009. *In the Matter of: Nitrogen Oxide (NOx) Trading Program Sunset Provisions for Electric Generating Units (EGUs): New 35 Ill. Adm. Code 217.751*, R09-20 (Oct. 15, 2009). The SIP was not approved by USEPA until the following year. 75 FR 9103 (March 1, 2010, approving rule as of April 30, 2010).

issue that has come up and it is a complicated one.” (June 7, 2018, Tr. at 35-36). Contrary to IERG’s statements, this issue is neither complicated nor undecided, at least as it pertains to air pollution control matters. The Agency is unaware of anything in federal regulations or case law that establishes that variances/adjusted standards are held to a different SIP-approval/federal enforceability standard than rule amendments, and USEPA has not advised the Illinois EPA that a different standard exists. Illinois is required to submit variances and adjusted standards to USEPA for approval. 40 CFR 51.104(b) and (d). Until such approval, the regulation from which the source obtained relief at the State level continues to be federally enforceable, and the source takes a “risk” of noncompliance with the SIP if it takes advantage of the relief prior to federal approval.⁶

IERG acknowledged that the SIP gap is a common scenario but indicated that “in this instance it’s a little different because the state law would no longer require obligations that the federal would continue to [require].” (June 7, 2018, Tr. at 34-35). The SIP gap, however, exists regardless of whether the Board is eliminating or tightening or simply changing a standard, and SIP gap issues arise in various types of proceedings. For instance, as explained above, SIP gap issues exist in regulatory relief proceedings, as relief granted by the Board is unavailable at the federal level until approved by USEPA. SIP gap issues also arise with rule changes that do not necessarily implicate tightening or loosening; if a rule changes the form of an emissions standard (from concentration-based to emissions-based, for example) with resulting changes in measurement methods or recordkeeping and reporting obligations, sources must technically

⁶ For example, if a source obtains a variance from Emission Limit X for a period of two years, it has regulatory relief at the State level for that period of time; until USEPA approves the variance, however, which might take longer than two years, Emission Limit X remains enforceable, and the source takes a risk of SIP noncompliance if it utilizes the relief immediately. Agency staff though cannot recall any enforcement actions brought by any party in such situations in Illinois.

comply with both sets of standards prior to SIP approval. This is not an uncommon occurrence – a number of the most recent changes to coating regulations altered the units of measurement used for compliance determinations, the most recent changes to certain printing regulations altered the categorization of processes in a way that would subject some sources to two standards at the same time, and recent SO₂ regulations changed the emissions standard from a process-based emission rate (lbs/mmBtu) to a time-based standard (lbs/hr) for at least one impacted source. SIP gap issues can therefore arise not only in the case of a rule sunset, but also in additional scenarios.

Unless Illinois is willing to concede a portion of its regulatory authority to USEPA by making State regulatory decisions contingent on federal approval, there is simply no good State solution for the SIP gap. It is a product of the state-federal cooperative structure of environmental regulation in the United States, and federal action would be required to eliminate it. Until then, many Board rulemakings and regulatory relief proceedings will carry with them a theoretical risk of SIP noncompliance, a risk that has existed with few, if any, real-world ramifications for Illinois for many decades.

If the Board chooses to address the theoretical risk in this rulemaking, it may be hard-pressed to do otherwise in future matters. Tackling the SIP gap at the expense of the Board's authority is not an action to be taken lightly, particularly when the Agency has explained there is almost no likelihood of any real-world impact and there is no ideal solution at the State level.

Sources' Options

For the small number of sources that are concerned with SIP noncompliance during the SIP gap period, they may continue to comply with the ERMS rule until USEPA approves the SIP revision if they so choose. As explained by the Agency at hearing, if these sources want to

ensure that they are above reproach and, for their own edification, continue to voluntarily comply with the ERMS rule, they are free to do so; they cannot trade Allotment Trading Units (“ATUs”) using the Agency’s system, but they can certainly emit below their allowance allocations, submit reports to the Agency, and trade ATUs amongst themselves.⁷ (See June 7, 2018, Tr. at 40).

While IERG suggested at hearing that ERMS sources would not know what level to emit under (June 7, 2018, Tr. at 44-45), the Agency’s witness pointed out that this is simply not the case. (June 7, 2018, Tr. at 43-45). Source’s annual allotments are determined by a historical baseline, set forth in their permits, and the amounts do not change from year to year except under rare circumstances.⁸ (June 7, 2018, Tr. at 43-45, *also see* the Illinois EPA’s Technical Support Document at 1 and 2, and Statement of Reasons at 2, February 22, 2018). Concerned sources can ensure their emissions stay below these levels and can continue submitting reports to the Illinois EPA. (June 7, 2018, Tr. at 40). In this fashion, sources may continue to comply with SIP requirements, or may take advantage of Illinois’ reform and cease expending resources on obsolete regulatory requirements.

From a permitting perspective, sources that have a permit issued under the Clean Air Act Permit Program (“CAAPP”) may elect to submit an application for permit modification to reflect the repeal of the ERMS rule. As the Agency explained at hearing, the benefit of such request for modification “runs” to CAAPP sources immediately upon application. (June 7, 2018, Tr. at 40). Modifications can be submitted to Illinois EPA even prior to SIP approval. This should allay

⁷ It is difficult to assess whether sources that would opt to continue complying with ERMS via the SIP are among the few that still purchase ATUs for ERMS compliance.

⁸ For example, it is possible that a company could opt to change its method for calculating emissions. Should that be the case, the baseline would be refigured based on the new method of calculation. It is highly unusual that a company would elect to do this.

any concerns that CAAPP sources may have regarding certification of compliance with their permit conditions.⁹

Conclusion

The Agency does not dispute that SIP provisions are enforceable as a matter of federal law until a SIP revision is approved. However, such SIP gap is not a new concept. Further, the SIP gap does not justify Illinois yielding regulatory control to the USEPA. This is especially true where, based on decades of history, there is no evidence of adverse impacts to Illinois sources attributable to SIP gaps. IERG's suggestions could set an untenable precedent, with future adverse implications for the Board, the Agency, and Illinois sources. Furthermore, extending the sunset in the manner IERG suggests, with the uncertainty over the timing of USEPA's approval and the related sunset of the program, is contrary to the Agency's efforts and the administration's directive to streamline unnecessary regulations. It would needlessly burden ERMS sources with outdated regulatory requirements for some additional period of time, when the Agency has provided a "compliance path forward" for interested sources.

The Board should exercise its full authority, reject IERG's request, and adopt the sunset date of April 30, 2018, as proposed by the Illinois EPA.

II. RESPONSES TO BOARD QUESTIONS

1. The Hearing Officer asked the Agency, "Is there any procedure through which an ERMS source could apply for a permit modification after hypothetically the Board adopts a sunset date, but while the SIP revision is being considered by USEPA? ... [I]s there anything a source could do to address the issue that IERG had raised by having an application for a permit modification pending?" (June 7, 2018, Tr. at 49).

⁹ Sources with federally enforceable state operating permits ("FESOPs") are not required to certify compliance with permit conditions.

As the Agency explained in its comments above, ERMS sources can submit applications for permit modification if they so choose. CAAPP sources receive the benefit of requested modifications upon receipt by the Agency. Such modification would serve to resolve the concern regarding certification of compliance with CAAPP permit conditions; this certification concern does not exist for FESOP sources as they are not required to certify compliance with permit conditions.

2. The Hearing Officer asked the Agency, with regard to minor modifications generally, “[I]s there an amount of time that it is typical for the Agency to review and decide on an application for the minor permit modification?” (June 7, 2018, Tr. at 49-50).

The amount of time the Agency takes to review an application for a minor CAAPP permit modification varies, but is not relevant in this context as CAAPP sources receive the benefit of the requested minor permit modification upon receipt by the Agency.¹⁰

3. The Hearing Officer asked the Agency if it had “considered any specific sort of plan or strategy that would identify sources with an ERMS condition in their permits to notify them with the hope of perhaps expediting the permit modification . . . procedure.” (June 7, 2018, Tr. at 50).

Notifying sources (assumedly of an adopted ERMS sunset rule) to spur permit modifications is unnecessary and inconsistent with current Agency practice. To the Agency’s knowledge, ERMS sources have already been notified of this rulemaking by the Board. ERMS sources should be aware of any ERMS conditions in their permits. A modification is not required; rather, it is at the discretion of the source. However, any source wishing to modify its

¹⁰ Section 39.5 of the Environmental Protection Act provides, in pertinent part, “Any CAAPP source may make the change proposed in its minor permit modification application immediately after it files such application.” It further provides that, once the source makes the proposed change and until the Agency acts on the modification application, “the source need not comply with the existing permit terms and conditions it seeks to modify.” 415 ILCS 5/39.5(a)(vi).

permit can do so in accordance with the process described above. The Illinois EPA would process the applications as appropriate.

4. The Hearing Officer asked the Agency if it had “anything in writing ... that reflects the USEPA’s position on the proposal that is before the Board.” (June 7, 2018, Tr. at 51).

The Agency has attached e-mail correspondence from the USEPA, dated November 21, 2017, stating, “The [Section] 110(l) portion of ERM[S] looks good.” The Section 110(l) demonstration is the basis for the approval of the SIP revision sunsetting the ERMS program and the Agency customarily works with the USEPA prior to a rule change so that the Agency knows if the subsequent SIP revision will be approved. (*See Attachment 1.*)

5. The Hearing Officer requested that the Agency provide its analysis of economic and budgetary effects for the proposed sunset of ERMS and its response to the State Mandates Act Questionnaire.

The Illinois EPA submits the Agency Analysis of Economic and Budgetary Effects for Proposed Rulemaking form and the State Mandates Act Questionnaire. (*See Attachments 2 and 3.*)

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Annet Godiksen
Annet Godiksen
Assistant Counsel
Division of Legal Counsel

DATED: July 3, 2018

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Asselmeier, Buzz

From: Persoon, Carolyn <persoon.carolyn@epa.gov>
Sent: Tuesday, November 21, 2017 1:12 PM
To: Asselmeier, Buzz; Aburano, Douglas
Subject: [External] Re: Revised ERMS document to account for "no limit" emission units

Hi Buzz-

The 110(l) portion of ERMs looks good - thanks for updating it. Please let me know if you need anything else.

Cheers!

CP

From: Asselmeier, Buzz <Buzz.Asselmeier@Illinois.gov>
Sent: Tuesday, November 21, 2017 11:02:04 AM
To: Persoon, Carolyn; Aburano, Douglas
Subject: FW: Revised ERMS document to account for "no limit" emission units

Here's the response I sent back in October to your comments about the ERMS document/data.

From: Asselmeier, Buzz
Sent: Thursday, October 19, 2017 8:09 AM
To: 'Persoon, Carolyn' <persoon.carolyn@epa.gov>; 'aburano.douglas@epa.gov' <aburano.douglas@epa.gov>
Cc: Bloomberg, David E. <David.Bloomberg@Illinois.gov>; Sims, Jackie <Jackie.Sims@Illinois.gov>; Vetterhoffer, Dana <Dana.Vetterhoffer@Illinois.gov>
Subject: Revised ERMS document to account for "no limit" emission units

Here's the revised ERMS document with the updates necessary to account for the emission units that did not have a permanent and enforceable limit. The only changes made to the document start after the long table right before Section 6.3. I have left the "track changes" marks so you can see what was changed.

An updated spreadsheet has also been included. So as to not screw around with the original numbers in the table, I created another tab in the spreadsheet which deals with the 230 emission units that didn't have a limit. This way you can see the original limit and the new potential side by side and a short description on the methodology used for establishing the potential emissions. I have also included last year's reported emissions.

Hopefully these revisions will help. Let us know either way.

David "Buzz" Asselmeier
Bureau of Air – Air Quality Planning Section
buzz.asselmeier@illinois.gov
217-782-0285



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**AGENCY ANALYSIS OF ECONOMIC AND BUDGETARY EFFECTS OF PROPOSED
RULEMAKING:**

Agency: Illinois Environmental Protection Agency

Part/Title: 35 Ill. Adm. Code Part 205: EMISSIONS REDUCTION
MARKET SYSTEM

Illinois Register Citation: 42 Ill. Reg. 6572 – 4/13/18

Please attempt to provide as dollar-specific responses as possible and feel free to add any relevant explanation.

1. Anticipated effect on State expenditures and revenues.

(a) Current cost to the agency for this program/activity.

The current annual cost Agency-wide, for the Emissions Reduction Market System (“ERMS”) is approximately \$36,800. The proposed rulemaking will sunset the ERMS program for the Agency as well as the sources subject to ERMS.

(b) If this rulemaking will result in an increase or decrease in cost, specify the fiscal year in which this change will first occur and the dollar amount of the effect.

The decrease in cost should begin towards the middle of FY2019. The approximate savings is \$36,800 per year.

(c) Indicate the funding source, including Fund and appropriation lines, for this program/activity.

BOA Fund 091-53210-1900-00-00

(d) If an increase or decrease in the costs of another State agency is anticipated, specify the fiscal year in which this change will first occur and the estimated dollar amount of the effect.

There is no impact to another State agency.

(e) Will this rulemaking have any effect on State revenues or expenditures not already indicated above?

No.

2. Economic effect on persons affected by the rulemaking:

(a) Indicate the economic effect and specify the persons affected:

Positive X Negative No effect

Persons affected: **All sources subject to ERMS**

Dollar amount per person: **Costs vary per source and this information is not known to the Agency.**

Total statewide cost: **The total decrease in costs for all of the sources subject to ERMS is not known to the Agency.**

- (b) If an economic effect is predicted, please briefly describe how the effect will occur.

There will be a decrease in costs for all sources subject to ERMS.

- (c) Will the rulemaking have an indirect effect that may result in increased administrative costs? Will there be any change in requirements such as filing, documentation, reporting or completion of forms?

No.

Yes, the recordkeeping and reporting requirements of ERMS will no longer be in effect.

State Mandates Act Questionnaire

Agency: Illinois Environmental Protection Agency

Part/Title: Emissions Reduction Market System (35 Ill. Adm. Code 205)

Illinois Register Citation: 42 Ill. Reg. 6572 – 4/13/18

1. Does this rulemaking affect any of the following: **No**

- | | |
|---------------------------------------|--|
| <input type="checkbox"/> Municipality | <input type="checkbox"/> Other Unit of Local Govt. |
| <input type="checkbox"/> County | <input type="checkbox"/> School District |
| <input type="checkbox"/> Township | <input type="checkbox"/> Community College Dist. |

2. Does this rule require any of the above entities to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues?

Yes No Number of units affected N/A

If yes, please estimate the amount of additional expenditures necessitated by this rulemaking per unit of government: \$ _____

Note: If the dollar amount, or total number of units affected is unknown, please outline and attach to this form an explanation of the steps taken by the agency to determine the approximate expense of the rulemaking, and the number of units affected.

If no, please explain why the rule does not necessitate such additional expenditures.

Rule does not create a State Mandate and sunsets all ERMS program requirements.

3. Were any alternatives that do not necessitate additional expenditures considered?

Yes No **N/A – No additional expenditures**

If yes, please list these alternatives and explain why they were rejected.

4. What are the policy objectives of the rulemaking? (Please be specific)

To sunset an ineffective rule.

5. Please explain why the policy objectives of this rule cannot be achieved in the absence of the rule or through a rule that does not create a State Mandate.

This rule eliminates the ERMS program and does not create a State Mandate.

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MARKET SYSTEM)

MOTION TO CORRECT TRANSCRIPT

The Illinois Environmental Protection Agency (“Agency” or “Illinois EPA”), by its attorney, and pursuant to 35 Ill. Adm. Code § 101.604, requests that the Hearing Officer order the correction of the transcript of the June 7, 2018, hearing held on this matter, as follows:

<u>Page</u>	<u>Line</u>	<u>Correction</u>
1		“May 8, 2018” should be “June 7, 2018”
39	18	“met” should be “not”
42	12	“unattended” should be “unintended”
43	19	“state” should be “stay”

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Annet Godiksen
Annet Godiksen
Assistant Counsel
Division of Legal Counsel

DATED: July 3, 2018
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AMENDMENT TO 35 ILL. ADM. CODE) R18-22
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MARKET SYSTEM)

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S POST-HEARING COMMENTS AND RESPONSE TO THE ILLINOIS POLLUTION CONTROL BOARD QUESTIONS REGARDING THE SUNSET OF THE EMISSIONS REDUCTION MARKET SYSTEM and the MOTION TO CORRECT TRANSCRIPT upon the person to whom it is directed, by the following means:

By emailing the comments, response, and motion, numbering 19 pages, from annet.godiksen@illinois.gov, on July 3, 2018, by 4:30 PM to the following persons:

To: Tim Fox
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601-3218
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ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ Annet Godiksen
Annet Godiksen
Assistant Counsel
Division of Legal Counsel

DATED: July 3, 2018

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