

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2018

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

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by K. Papadimitriu):

The Board today adopts final amendments to its air pollution rules that “sunset” the Emissions Reduction Market System (ERMS) on April 30, 2018. *See* 35 Ill. Adm. Code 205. The full text of the amendments is below in the Board’s order. There are no substantive changes to these rules from those proposed in the Board’s August 23, 2018 second-notice opinion and order. The adopted amendments will become effective upon filing with the Secretary of State.

The Illinois Environmental Protection Agency (IEPA) proposed these amendments on February 22, 2018. On March 22, 2018, the Board submitted the proposal to first-notice publication without commenting on its substantive merits. *See* 42 Ill. Reg. 6572-76 (Apr. 13, 2018). On August 23, 2018, the Board proposed the rules for second-notice review by the Joint Committee on Administrative Rules (JCAR), making only non-substantive clarifying revisions to the first-notice proposal.

The Board’s second-notice opinion discussed ERMS, IEPA’s proposal, public comments, and a number of issues. The Board does not repeat these discussions today and directs readers who wish to review them to the second-notice opinion and order on its website (pcb.illinois.gov) under this docket number R18-22.

At its November 13, 2018 meeting, JCAR responded to the Board’s proposal by objecting on two grounds and also issuing a recommendation. JCAR also proposed a single non-substantive change to the Source Note for Part 205. The Board agrees to make this change, which is reflected in the adopted rules. Below, the Board provides an abbreviated procedural history, responds to JCAR’s objections and recommendation, and addresses technical feasibility and economic reasonableness before reaching its conclusion and issuing its order.

ABBREVIATED PROCEDURAL HISTORY

On February 22, 2018, IEPA filed its rulemaking proposal accompanied by documents including a Technical Support Document (TSD). On March 22, 2018, the Board accepted IEPA’s proposal for hearing and submitted the proposal to first-notice publication without commenting on its substantive merits. *See* 42 Ill. Reg. 6572-76 (Apr. 13, 2018).

The Board scheduled two hearings, the first on May 10, 2018, and the second on June 7, 2018. The Board published notice of the hearings in the *State Journal-Register* of Springfield on March 25, 2018; the *Chicago Sun-Times* on March 26, 2018; and the *Illinois Register* on April 20, 2018 (42 Ill. Reg. 7602 (Apr. 20, 2018)).

On March 26, 2018, the Board received a comment on IEPA's proposal from Anjali Patel of Sage ATC Environmental Consulting. On April 4, 2018, the Board docketed as a public comment an e-mail exchange between JCAR and the Board.

On April 26, 2018, IEPA pre-filed testimony by Mr. David "Buzz" Asselmeier (IEPA Test.), manager of the Inventory Data and Systems Unit of the Air Quality Planning Section. The first hearing took place as scheduled on May 10, 2018, and the Board received the transcript (5/10/18 transcript) on May 16, 2018. On May 17, 2018, IEPA filed responses to questions at the first hearing from the Board and IERG (IEPA Resps.).

The second hearing took place as scheduled on June 7, 2018, and the Board received the transcript (6/7/18 transcript) on June 12, 2018. On July 3, 2018, the Board received post-hearing comments from IERG (IERG Cmts.) and IEPA (IEPA Cmts.). On August 23, 2018, the Board adopted its second-notice opinion and order.

On October 11, 2018, the Board received public comments originally submitted to JCAR by the Environmental Defense Fund and the Illinois Environmental Council. On October 15, 2018, the Board received a public comment originally submitted to JCAR by IEPA. The Board docketed as public comments two e-mail exchanges between JCAR and the Board, the first on October 30, 2018, and the second on November 7, 2018.

DISCUSSION

JCAR Objections

First, JCAR objected to this proposal "because it sets a retroactive sunset date for the system that predates any possible adoption date for this rulemaking."

The proposed "sunset" will not impose retroactive obligations on ERMS sources. The rulemaking record before the Board 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 these ERMS paperwork requirements, despite ERMS providing no additional emissions reductions, and to do so contrary to their reasonable expectations.

In its initial proposal to the Board on February 22, 2018, 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 the 'seasonal allotment period' or 'season.'" TSD at 1. 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 Test. at 2-3. IEPA chose 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. 5/10/18 transcript at 24-25. 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 believes that ERMS sources are very likely to recognize the proposed “sunset” date.

It is a later “sunset” that, from a practical perspective, 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. IEPA Cmts., Attachment 2. These expenditures clearly outweigh zero, the current environmental benefit from ERMS.

The Board assures JCAR that it has carefully considered JCAR’s first objection. 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 does not believe that its proposal sets an inappropriate “sunset” date. Accordingly, the Board declines to modify or withdraw its proposal on this basis.

Second, JCAR also objected to “[I]EPA’s implementation of the policy stated in this rulemaking prior to adoption of the rulemaking by PCB.” The Board responds only for itself and declines to modify or withdraw its proposal on this basis. However, the Board placed JCAR’s objection on its website where it is publicly available for IEPA to review.

JCAR Recommendation

JCAR “recommends that, if PCB and [I]EPA believe this program is no longer warranted, they should seek repeal of Section 9.8 of the Environmental Protection Act [415 ILCS 5], which requires [I]EPA to design and carry out an emissions reductions market program.”

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.

The rulemaking record before the Board 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. TSD at A-1 to A-17; *see* 42 U.S.C. § 7511a; 5/10/18 Transcript at 13-14.

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) (emphasis added). The Board’s proposal meets this requirement by “sunsetting” ERMS applicability to sources.

Although the ERMS rules are not necessary to attain and maintain the current NAAQS for ozone, Section 9.8 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).

While the Board has carefully considered JCAR’s recommendation, it respectfully declines for the reasons above to seek repeal of Section 9.8 of the Act. The Board notes that JCAR’s recommendation is also directed to IEPA. The Board responds only for itself, but it placed JCAR’s recommendation on its website where it is publicly available for IEPA to review.

Technical Feasibility and Economic Reasonableness

At second notice, the Board found that IEPA’s proposal, with limited nonsubstantive clarifying revisions, amends the Board’s air pollution regulations in a manner that is technically feasible and economically reasonable. The adopted rules include only a nonsubstantive change that does not affect this finding, and the Board finds that the adopted rules are technically feasible and economically reasonable.

CONCLUSION

While the Board has carefully considered JCAR’s objections and recommendations, it declines to modify or withdraw its proposal based on the objections and declines to pursue JCAR’s recommended action. The Board concludes to adopt amendments to its ERMS rules with only one non-substantive amendments to its second-notice proposal.

ORDER

The Board directs the Clerk to submit the adopted amendment to Part 205 found in the order below to the Secretary of State for publication in the *Illinois Register*. Additions are underlined and deletions appear stricken.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION

CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER b: ALTERNATIVE REDUCTION PROGRAM

PART 205
EMISSIONS REDUCTION MARKET SYSTEM

SUBPART A: GENERAL PROVISIONS

Section	
205.100	Severability
205.110	Purpose
<u>205.115</u>	<u>Sunset Provision</u>
205.120	Abbreviations and Acronyms
205.130	Definitions
205.150	Emissions Management Periods

SUBPART B: APPLICABILITY

Section	
205.200	Participating Source
205.205	Exempt Source
205.210	New Participating Source
205.220	Insignificant Emission Units
205.225	Startup, Malfunction or Breakdown

SUBPART C: OPERATIONAL IMPLEMENTATION

Section	
205.300	Seasonal Emissions Component of the Annual Emissions Report
205.310	ERMS Applications
205.315	CAAPP Permits for ERMS Sources
205.316	Federally Enforceable State Operating Permits for ERMS Sources
205.318	Certification for Exempt CAAPP Sources
205.320	Baseline Emissions
205.330	Emissions Determination Methods
205.335	Sampling, Testing, Monitoring and Recordkeeping Practices
205.337	Changes in Emissions Determination Methods and Sampling, Testing, Monitoring and Recordkeeping Practices

SUBPART D: SEASONAL EMISSIONS MANAGEMENT

Section	
205.400	Seasonal Emissions Allotment
205.405	Exclusions from Further Reductions
205.410	Participating Source Shutdowns

SUBPART E: ALTERNATIVE ATU GENERATION

Section	
205.500	Emissions Reduction Generator
205.510	Inter-Sector Transaction

SUBPART F: MARKET TRANSACTIONS

Section	
205.600	ERMS Database
205.610	Application for Transaction Account
205.620	Account Officer
205.630	ATU Transaction Procedures

SUBPART G: PERFORMANCE ACCOUNTABILITY

Section	
205.700	Compliance Accounting
205.710	Alternative Compliance Market Account (ACMA)
205.720	Emissions Excursion Compensation
205.730	Excursion Reporting
205.740	Enforcement Authority
205.750	Emergency Conditions
205.760	Market System Review Procedures

AUTHORITY: Implementing Section 9.8 and authorized by Sections 27 and 28 of the Environmental Protection Act [415 ILCS 5/9.8, 27 and 28].

SOURCE: Adopted in R97-13 at 21 Ill. Reg. 15777, effective November 27~~25~~, 1997; amended in R05-11 at 29 Ill. Reg. 8848, effective June 13, 2005; amended in R18-22 at 42 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 205.115 Sunset Provision

~~This Part does not apply on and after April 30, 2018. Subject sources must comply with this Part before April 30, 2018.~~


(Source: Added at 42 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the

order. 415 ILCS 5/41(a) (2016); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 6, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Clerk
Illinois Pollution Control Board