

ILLINOIS POLLUTION CONTROL BOARD
December 15, 1988

IN THE MATTER OF:)
PROPOSED AMENDMENTS TO) RES 88-4
35 ILL. ADM. CODE 201,) R 87-38
SUBPARTS J & L (Self-Monitoring))

RESOLUTION IN RESPONSE TO JCAR OBJECTION.

RESOLUTION AND ORDER OF THE BOARD (by J.D. Dumelle):

This Resolution and Order constitutes the Pollution Control Board's (Board) formal response to the November 15, 1988 Statement Of Objection issued by the Joint Committee on Administrative Rules (JCAR). Section 7.06(c) requires that an Agency respond within 90 days of such objection. Section 7.06(c) of the APA states that an Agency may modify the proposed rule or amendment(s) to meet the Joint Committee's Objection or withdraw the proposed rule or amendment in its entirety or may refuse to modify or withdraw the proposed rule or amendment. For the reasons set forth below the Board hereby refuses to modify or withdraw the proposed rules.

The JCAR objection reads, in pertinent part, as follows:

".... the Board could have provided the Joint Committee with a more detailed analysis of the economic effects of these rules. Although only the monitors are required by the rules, the other costs associated with installation can vary, and specific examples were provided to the Board by facilities that are already in compliance. The Board also knew what facilities would have to install monitors and boilers as a result of these rules, and the number of monitors and boilers required at each facility."

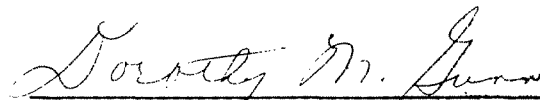
The Board strongly disagrees with the JCAR Objections. Question A(1) of the Agency Analysis Of Economic And Budgetary Effects Of Proposed Rulemaking asks questions regarding the effect of the proposed rule on the regulated community. The Board, seeking to answer the question in the most comprehensive manner, fairly stated that any economic impact would be different for each facility depending on whether extensive infrastructure construction is needed or not. Obviously, different plants and facilities, with different characteristics will encounter different costs of installation. Nonetheless, the Board notes that some actual, discrete dollar figures were submitted at hearing but were not set forth in the answer to question A(1).

In addition, the Board notes that this rulemaking is a joint proposal by the Illinois Environmental Protection Agency, the Illinois Manufacturers Association and the Citizens For A Better Environment. Government, industry and environmental groups were all represented and have forged a consensus manifested in the proposed rule. Similarly this proposal is the result of a federal lawsuit which, by way of settlement agreement, requires adoption of the proposed rule. C.B.E. et al. v. USEPA, 80 C 0003 US Dist. Court (N.D. Illinois). Refusal to adopt the proposed rule would undermine the consensus reached, nullify the agreed settlement in the federal lawsuit, result in vastly inefficient use of scarce resources and make government regulation of certain air pollution sources more difficult and costly.

The Board does not take a Joint Committee Objection lightly. Section 7.06 of the APA sets forth the universe of possible Board responses. As neither modification nor withdrawal of the proposed rule is practical, the Board's only recourse is to refuse to modify (although that is not an accurate statement) the proposed rules. The Board regrets that this is the case, but believes that it is in the best interests of the state to do so.

IT IS SO RESOLVED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Resolution and Order was adopted on the 15th day of November, 1988 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board