

ILLINOIS POLLUTION CONTROL BOARD  
February 6, 2020

IN THE MATTER OF: )  
)  
PROPOSED NEW 35 ILL. ADM. CODE 204, ) R19-1  
PREVENTION OF SIGNIFICANT ) (Rulemaking – Air)  
DETERIORATION, AMENDMENTS TO 35 )  
ILL. ADM. CODE PARTS 101, 105, 203, 211, )  
AND 215 )

ORDER OF THE BOARD (by C.M. Santos)

On July 2, 2018, the Illinois Environmental Protection Agency (IEPA) proposed that the Board adopt a new Part 204 of its air pollution rules creating a state Prevention of Significant Deterioration (PSD) permitting program. IEPA intends that its proposal will allow it to assume responsibility for PSD permitting from the United States Environmental Protection Agency (USEPA) and also allow the Board to decide appeals of PSD permits issued by IEPA. IEPA also proposed to amend existing Parts 101, 105, 203, 211, and 215 of the Board’s rules to conform with the new Part 204. IEPA states that its proposal meets requirements to establish such a program under Section 9.1 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/9.1(c) (2018); *see* Public Act 99-463, eff. Jan. 1, 2016)). The Board has held two hearings and received comments on IEPA’s proposal.

On January 16, 2020, IEPA filed a motion for expedited review (Mot.). Attached to the motion is an affirmation by IEPA’s counsel. *See* 35 Ill. Adm. Code 101.512(a).

IEPA proposed amendments to its own public participation rules to conform to the rulemaking proposed to the Board. Mot. at 2. IEPA’s proposed new 35 Ill. Adm. Code 105.Subpart F (PSD Permit Appeals) refers to provisions of Part 252 that IEPA has proposed but not yet adopted. Mot. at 2; *see* 43 Ill. Reg. 7028 (June 21, 2019). IEPA submitted its first-notice proposal “to coordinate the timing of these revisions” with the proposal it submitted to the Board. Mot. at 2. “[N]o more than one year may elapse from the date that a proposed rule appears in the *Illinois Register* until the date the rule is adopted.” Mot. at 2, citing 1 Ill. Adm. Code 100.400(b); *see* 5 ILCS 100/5-40(e) (2018) (Illinois Administrative Procedure Act). IEPA concludes that its proposed amendments to Part 252 “will lapse on June 20, 2020.” Mot. at 3.

IEPA adds that its primary technical witness, Mr. Christopher Romaine, Manager of the Construction Unit in the Bureau of Air’s Permit Section, intends to retire in December 2020. Mot. at 3. IEPA states that, during nearly 44 years of service, Mr. Romaine “has established himself as the leading expert on PSD permitting in the State of Illinois.” *Id.* IEPA adds that it would benefit from Mr. Romaine’s knowledge and experience during the Board’s consideration. *See id.*

Based on these two factors, IEPA moves that the Board proceed “as expeditiously as possible” to first notice under the Illinois Administrative Procedure Act. Mot. at 4; *see* 5 ILCS 100/5-40 (2018).

A request for expedited review must include, among other elements, “a complete statement of the facts and reasons for the request.” 35 Ill. Adm. Code 101.512(a). When deciding a motion for expedited review, the Board considers, at a minimum, “all statutory requirements and whether or not material prejudice will result from the motion being granted or denied.” 35 Ill. Adm. Code 101.512(b). In addition, the Board will grant a motion for expedited review “consistent with available resources and decision deadlines.” 35 Ill. Adm. Code 101.512(c).

The Board currently has a number of rulemaking dockets requiring immediate attention, as well as pressing cases of various other types. The Board’s limited resources make it unlikely that the Board will grant a motion for expedited review in all but unusual circumstances. However, the Board is persuaded that the facts and reasons cited in IEPA’s motion are unusual circumstances that warrant granting a motion to expedite. Accordingly, the Board will proceed with consideration of IEPA’s proposal as expeditiously as it able to do so with its available resources, and it directs its hearing officer to take any necessary steps to avoid delay.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 6, 2020 by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board