

ILLINOIS POLLUTION CONTROL BOARD
February 19, 2009

IN THE MATTER OF:)
)
AIR QUALITY STANDARDS CLEAN-UP:) R09-19
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Air)
PART 243)

ORDER OF THE BOARD (by A.S. Moore):

On January 20, 2009, the Illinois Environmental Protection Agency (Agency) filed a motion to amend its rulemaking proposal (Mot.).¹ The Agency originally filed this proposal on December 1, 2008, and the Board accepted it for hearing in an order dated December 18, 2008. Generally, the Agency proposes to amend Part 243 of the Board's air pollution regulations (35 Ill. Adm. Code 243) to incorporate new federal air quality standards.

MOTION TO AMEND

The Agency states that it moves to amend its proposal in order to include in Part 243 a new National Ambient Air Quality Standard (NAAQS) for lead recently adopted by the United State Environmental Protection Agency (USEPA). Mot. at 1, citing 73 Fed. Reg. 66964 (Nov. 12, 2008) (final rule).

Specifically, the Agency seeks to amend its original proposal by adding language that replaces the existing air quality standard for lead with the new NAAQS of "0.15 micrograms per cubic meter, as determined as a maximum rolling three month average evaluated over a three year period." Mot. at 2; *see* 35 Ill. Adm. Code 243.126(a), Mot. at 3. The Agency also proposes to amend its proposal by adding language providing that measurements by the atomic absorption spectrometry or equivalent method described in the Code of Federal Regulations (CFR) must be used to determine compliance with the new standard. Mot. at 2, citing 40 C.F.R. 50 Appendices G, Q; 35 Ill. Adm. Code 243.126(b), Mot. at 3. Finally, the Agency also seeks to amend its original proposal by including in materials incorporated by reference a citation to the provisions of the CFR codifying the new standard. Mot. at 2; *see* 40 C.F.R. 50, 51, 53, 58 (National Ambient Air Quality Standards for Lead; Final Rule); 73 Fed. Reg. 66964 (Nov. 12, 2008); 35 Ill. Adm. Code 243.108; Mot. at 3 (proposing new subsection 243.108(k)).

The Agency argues that, while the proposed amendment may affect sources throughout the state, it "simply incorporates the addition of a new federal standard which is currently applicable throughout the nation." Mot. at 2. The Agency further argues that the proposed

¹ Also on January 20, 2009, the Agency filed a motion to reschedule the first hearing, which the Board had set to take place on Tuesday, February 3, 2009. The Agency effectively requested that the Board postpone the first hearing to Tuesday, March 10, 2009, which had been the scheduled date of the second hearing. In an order dated January 30, 2009, the hearing officer granted the Agency's motion and rescheduled the hearing as requested.

amendment imposes no new requirements on sources, has been thoroughly analyzed in the course of its adoption by USEPA, and “is well known to industry.” *Id.*

DISCUSSION

Section 101.500(d) of the Board’s procedural rules provides in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Board has received no response to the Agency’s motion to amend its rulemaking proposal.

The Board grants the Agency’s motion to amend and accepts the Agency’s amendments to its rulemaking proposal. As provided in the hearing officer order of January 30, 2009, the Board will conduct its first hearing on the Agency’s amended proposal on Tuesday, March 10, 2009, in Chicago.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 19, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board