

ILLINOIS POLLUTION CONTROL BOARD  
August 6, 2009

IN THE MATTER OF: )  
)  
REASONABLY AVAILABLE CONTROL ) R10-08  
TECHNOLOGY (RACT) FOR VOLATLE ) (Rulemaking - Air)  
ORGANIC MATERIAL EMISSIONS FROM )  
GROUP II CONSUMER & COMMERCIAL )  
PRODUCTS: PROPOSED AMENDMENTS )  
TO 35 ILL. ADM. CODE 211, 218, and 219 )

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

On July 9, 2009, the Illinois Environmental Protection Agency (Agency or Illinois EPA) filed a proposal under the general rulemaking provisions of Sections 27, 28, and 28.2 of the Environmental Protection Act (Act). *See* 415 ILCS 5/27, 28, 28.2 (2008). Generally, the Agency proposes to adopt air pollution regulations to control emissions of volatile organic material (VOM)<sup>1</sup> for Group II Consumer & Commercial Products in ozone nonattainment areas classified as moderate and above. Group II products include industrial cleaning solvents, flat wood paneling coatings, flexible packaging printing materials, lithographic printing materials, and letterpress printing materials. Accompanying the Agency’s proposal were a motion for waiver of copy requirements (Mot. Waive) and a motion for expedited review (Mot. Expedite).

The Board today accepts the Agency’s proposal for hearing and grants the Agency’s request for waiver of copy requirements but denies the Agency’s motion for expedited review. The Board also directs the hearing officer to expeditiously schedule and proceed to hearing in this matter.

**SUMMARY OF PROPOSAL**

The Agency characterizes VOM as “a primary precursor to the formation of ground-level ozone.” Statement at 2-3. In 1997, USEPA revised the National Ambient Air Quality Standard (NAAQS) for ozone by instituting an 8-hour standard. *Id.* at 3, citing 62 Fed. Reg. 38856 (July 18, 1997). Two Illinois areas, Chicago and St. Louis/Metro East, have been designated as moderate nonattainment areas for the 8-hour ozone standard.<sup>2</sup> Statement at 3.

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<sup>1</sup> The Agency states that VOM and volatile organic compounds (VOC) are “effectively the same” as one another. Statement at 1.

<sup>2</sup> The Chicago nonattainment area includes the following jurisdictions: Cook, DuPage, Kane, Lake, McHenry, and Will Counties, Goose Lake and Aux Sable Townships in Grundy County, and Oswego Township in Kendall County. Statement at 3, citing 40 C.F.R. 81.314. The St. Louis/Metro East nonattainment includes the following Illinois counties: Jersey, Madison, Monroe, and St. Clair. Statement at 3, citing 40 C.F.R. 81.314.

The Agency states that its proposal intends to satisfy Illinois' obligation under the Clean Air Act (CAA) to submit a State Implementation Plan addressing VOM emissions in areas designated as nonattainment for the NAAQS for ozone. Statement at 1, 6, citing 42 U.S.C. §§ 7502, 7511a. Specifically, the Agency states that Illinois must revise its SIP to include reasonably available control technology (RACT) for sources of VOM emissions covered by a USEPA control technology guideline (CTG). Statement at 2, citing 42 U.S.C. § 7511a(b)(2). The Agency reports that, on October 5, 2006, USEPA issued final CTGs for Group II Consumer and Commercial Products. Statement at 4. USEPA required submission of SIP revisions responding to the CTGs within one year. *Id.* at 4, 5, citing 71 Fed. Reg. 58745-53.

In addition, the Agency states that "Illinois is required to submit these SIP revisions before the USEPA can redesignate the Chicago and Metro East nonattainment area as attaining the 1997 ozone NAAQS, regardless of whether the VOC reductions obtained by the SIP revisions are actually necessary to achieve attainment of the NAAQS." Statement at 6. The Agency notes that, on July, 2, 2007, it "submitted to the USEPA an attainment demonstration for the Metro East nonattainment area for the 1997 8-hour ozone NAAQS." *Id.* at 7. The Agency further notes that, on March 19, 2009, it submitted an attainment demonstration for the Chicago nonattainment area. *Id.* The Agency argues that "[t]hese areas cannot be redesignated to attainment of the ozone NAAQS, however, unless and until the Illinois EPA submits SIP revisions in response to the Group II CTGs and the USEPA approves such revisions." *Id.* The Agency claims that its proposal seeks "to implement the recommendations contained in the CTGs to the extent that such recommendations are consistent with, and impose stricter requirements than, existing regulations." *Id.*

The Agency also notes that USEPA recently strengthened the ozone standard. Statement at 7, citing 73 Fed. Reg. 16436 (Mar. 27, 2008). The Agency considers it "likely" that areas designated as nonattainment for the current standards will be designated nonattainment for the revised standards as well, with the exception of Jersey County. Statement at 7; Mot. Expedite at 3. The Agency argues that "[w]hile attainment of the revised standard is not the purpose of this rulemaking, it should be noted that any reduction in VOM emissions in the nonattainment areas resulting from these proposed amendments will likely help Illinois achieve the revised NAAQS." *Id.*

### **MOTION FOR WAIVER OF REQUIREMENTS**

The Agency notes that the Board's procedural rules require filing the original and nine copies of its regulatory proposal with the Board's Clerk. Mot. Waive at 1, citing 35 Ill. Adm. Code 102.200. The Agency further notes that that Act requires it also to file information supporting its proposal. Mot. Waive at 1, citing 415 ILCS 5/27(a) (2008). The Agency states that it has supplied with Board with seven documents on which it directly relied in drafting the proposed regulations. Mot. Waive at 1-2. Because its entire proposal consists of more than 700 pages, the Agency "requests that the Board waive the normal copy requirements and allow Illinois EPA to file the original and four copies" of its proposal and the documents relied upon in the development of the proposal. *Id.* at 2.

### **MOTION FOR EXPEDITED REVIEW**

The Agency states that it has submitted demonstrations that the Chicago and St. Louis/Metro East nonattainment areas now attain the 1997 8-hour ozone standard. Mot. Expedite at 2. The Agency argues that USEPA cannot redesignate those areas as attaining that standard “unless and until the Illinois EPA submits SIP revisions in response to Group II CTGs and the USEPA approves such revisions.” *Id.*

Also as noted above, USEPA has strengthened the 8-hour ozone NAAQS. Mot. Expedite at 3, citing 73 Fed. Reg. 16436 (Mar. 27, 2008). The Agency states that, in March of 2009, it “recommended to the USEPA that the same areas in Illinois that are currently designated as nonattainment for the 1997 standard be designated as nonattainment for the revised standards as well, with the exception of Jersey County.” Mot. Expedite at 3. The Agency further states that USEPA is expected make nonattainment designations by March of 2010, at which time “USEPA will issue guidance for states transitioning from the 1997 standard to the revised standard.” *Id.*

The Agency argues that, if either of the two of the two nonattainment areas violate the 1997 ozone standard before it is formally redesignated as attaining that standard, then “it is possible that such area would be ‘bumped up’ from its current ‘moderate’ nonattainment classification to a ‘serious’ or higher classification.” Mot. Expedite at 3, citing 42 U.S.C. § 7511a(c). The Agency states that “[a]reas designated as ‘serious’ are subject to more stringent requirements, including a lower major source threshold, enhanced monitoring requirements, and a stricter emission offset ratio.” Mot. Expedite at 3, citing 42 U.S.C. § 7511a. The Agency further states that a violation of the 1997 standard occurring after redesignation would not result in reclassification. Mot. Expedite at 3. Instead, “[t]he area in which the violation occurred would merely be required to implement targeted control measures pursuant to contingency provisions contained in the area’s maintenance plan.” *Id.*, citing 42 U.S.C. § 7505a. The Agency claims that “[r]edesignation is therefore necessary to foreclose the risk that a future violation of the 1997 standard will implicate reclassification and, in turn, heightened control measures.” Mot. Expedite at 4.

The Agency further argues that transition from the 1997 ozone standard to the revised standard “will most likely impose additional obligations upon areas that are still designated as nonattainment for the 1997 standard at the time final designations for the revised standard are made.” Mot. Expedite at 4, citing 40 C.F.R. 51.905(a)(1). The Agency claims that, although the USEPA’s transition policy and the risk of complications such as legal challenges resulting from that policy are uncertain, an expeditious redesignation would relieve Illinois of having to comply with such a policy and contend with its consequences. *See* Mot. Expedite at 4-5. Consequently, the Agency requests that the Board grant its motion for expedited review. *Id.* at 5.

### **DISCUSSION AND CONCLUSIONS**

First, the Board finds that the rulemaking proposal meets the content requirements of 35 Ill. Adm. Code 102. The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed to hearing under the rulemaking provisions of the Act and the Board’s procedural rules. 415 ILCS 5/27, 28, 28.2 (2008); 35 Ill. Adm. Code 102.

Next, the Board grants the Agency's motion for waiver of requirements and allows the Agency to file an original and four complete copies of its proposal and the documents upon which it directly relied in drafting the proposal.

Finally, turning to the Agency's motion for expedited review, the Board notes that Section 101.512 of its procedural rules addresses requests of this nature. *See* 35 Ill. Adm. Code 101.512. Such requests must include, among other elements, "a complete statement of the facts and reasons for the request." 35 Ill. Adm. Code 101.512(a). In acting on 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 only grant a motion for expedited review consistent with available resources. *See* 35 Ill. Adm. Code 101.512(c).

As a matter of its various resources and decision deadlines, the Board cannot expedite consideration of every case or rulemaking proposal. In denying a recent motion for expedited review filed by the City of Galva, the Board stated that its "limited resources in light of its current and future decision deadlines render the granting of a motion for expedited review unlikely in all but the most dire circumstances." In the Matter of: City of Galva Site-Specific Water Quality Standard for Boron Discharges to Edwards River and Mud Creek: 35 Ill. Adm. Code 303.447 and 303.448, R9-11, slip op. at 3 (Feb. 5, 2009) (denying motion for expedited review); see also In the Matter of: Ameren Ash Pond Closure Rules (Hutsonville Power Station): Proposed 35 Ill. Adm. Code Part 840.101 through 840.144, R09-21, slip op. at 9-10 (June 18, 2009) (same); In the Matter of: Petition of Westwood Lands, Inc. for an Adjusted Standard from Portion of 35 Ill. Adm. Code 807.104 and 810.103 or, in the Alternative, a Finding of Inapplicability, AS 09-3, slip op. at 10 (May 21, 2009) (same).

As noted above, expedited review is granted consistent with the Board's decision deadlines and available resources. *See* 35 Ill. Adm. Code 101.512(c). The Board currently has a number rulemaking dockets requiring immediate attention, as well as pressing cases of other types. As a result of attrition, the Board has fewer staff than it has had in many years. These circumstances have not meaningfully changed since the Board denied the City of Galva's motion for expedited review. These limited resources, particularly in light of current and future decision deadlines, continue to make it unlikely that the Board will grant a motion for expedited review in all but the most dire circumstances.

The Board did recently grant two Agency motions to expedite consideration of proposed rules in which the Agency described the risk of USEPA sanctions in the event that the State failed to remedy deficiencies in the SIP for ozone attainment. In each of these two rulemaking proceedings, the Board found that the USEPA implementation deadline of September 24, 2009, and the risk of federal sanctions, including those related to new source offsets and highway funding, constituted "dire circumstances." Section 27 Proposed Rules for Nitrogen Oxide (NO<sub>x</sub>) Emissions From Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R07-19, slip op. at 4 (Apr. 2, 2009); In the Matter of: Nitrogen Oxides Emissions from Various Source Categories, Amendments to 35 Ill. Adm. Code Parts 211 and 217, R08-19, slip op. at 4 (Apr. 2, 2009).

The Board does not discount the Agency's arguments regarding redesignation of the nonattainment areas. However, these arguments do not necessarily constitute "material prejudice" sufficient to allow the Board to grant the Agency's motion. Accordingly, the motion to expedite is denied. However, the Board commits to reaching a prompt decision in this matter as soon as the record is complete and directs its hearing officer to take any necessary steps to avoid delay in scheduling the required hearings and completing the record.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 6, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board