

ILLINOIS POLLUTION CONTROL BOARD  
May 5, 1994

IN THE MATTER OF: )  
 )  
PROPOSED AMENDMENTS TO ) R92-8  
35 ILL. ADM. CODE SUBTITLE C ) (Rulemaking)  
(WATER TOXICS AND BIOACCUMULATION) )

ORDER OF THE BOARD (by R. C. Flemal):

On April 4, 1994, the Illinois Environmental Protection Agency (Agency) filed a motion for clarification of the record with regard to the March 15, 1994 status report and incorporated documents filed by the joint proponents -- Illinois Chapter of the Sierra Club, Citizens for a Better Environment, Lake Michigan Federation and McHenry County Defenders. On April 22, 1994, the joint proponents filed a response accompanied by a motion for leave to file instanter. The motion for leave which cites mail delays in receipt of the motion and delays in responding due to personal illness, is hereby granted. This docket was open in July, 1992 upon receipt of the joint proponents' regulatory proposal, and five merit hearings have been held. The last hearing were held in this matter on April 14-15, 1993, and an amended proposal was filed in late June, 1993. Beginning in August, 1993, the proponents have filed a series of requests for continuance of the hearing schedule, to allow the joint proponents, the Agency, and various participants to meet to "negotiate differences among the participants". The requested stays have been granted by Hearing Officer order (see orders of December 10, 1993, and February 25, 1993.)

On March 15, 1994, the joint proponents filed a motion to resume hearings, on the grounds that there did not appear to be "complete agreement on any one of the issues under discussion". This motion was accompanied by a status report, to which the joint proponents appended Agency position papers which were distributed at the informal meetings held during the hiatus in hearings. Having received no response from the Agency or any other person, the hearing officer granted the motion by order of March 25, 1994. The hearing officer order stated in part:

In the interests of facilitating orderly resumption of these proceedings, I am enclosing with this order copies of the status report and Agency position papers which accompanied the March 15, 1994 motion. I am doing so in an attempt to give all persons who were not participants at the Agency-organized meetings some idea of what has informally occurred during the last several months. This may give you all a better idea as to what level of participation you may wish to have in future hearings.

In its April 4, 1994 motion for clarification, the Agency states that:

The Agency's position papers were intended solely to facilitate discussion within the work group so that a consensus on revisions to the regulatory proposal could be pursued. The Agency did not give permission for the position papers to be filed in this proceeding and is concerned that those papers, along with the joint proponents' representations in the status report, will be misconstrued as setting forth the Agency's official stance on the issues addressed.

[Accordingly], the Agency moves that the Board clarify that said status report and Agency position papers are for the limited purpose of advising the Board on the resumption of hearings in this matter and do not constitute part of the formal hearing record, exhibits or testimony.

In their April 22 response, the joint proponents reiterated their appreciation of the Agency's efforts to organize the informal meetings and to facilitate them by preparation of Agency position papers concerning the various topics contained in the proposal. The joint proponents state that they placed these papers in the record for the benefit of interested persons who did not participate in the work group meetings. The response goes on to state that:

The joint proponents do not presume that the status report, or any of the attachments, filed to comply with the Hearing Officer order, would be additional testimony or exhibits for the formal hearing record.

The joint proponents were not aware that the Agency had further qualifications to its carefully prepared positions on the key components of the Water Toxics Rule Proposal.

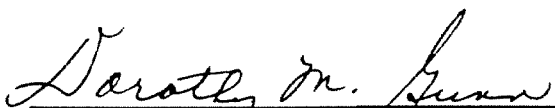
The Agency's motion to clarify is granted. The status report and position papers remain a part of the record for the sole purpose of advising the Board that the participants have in fact been meeting during the hiatus in hearing, and that the joint proponents have been diligent in pursuing progress concerning their proposal on an informal basis, justifying resumption of hearings.

Finally, the Board observes that the timing of the scheduling of additional hearings in this proceeding is contingent on the demands placed on the Board's rulemaking resources generally. The Board anticipates receipt from the Agency of a number of Clean Air Act rulemakings pursuant to

Section 28.5 of the Act which must be completed before the end of the calendar year. The Board currently has other rulemakings pending which also have completion deadlines.<sup>1</sup> While the Board will make every effort to accomodate the joint proponents' desire to have this proceeding advance expeditiously, this rulemaking may be deferred if necessary to allow timely completion of deadline-driven proceedings.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5<sup>th</sup> day of May, 1994, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board

---

<sup>1</sup> e.g. R93-29, Regulation of Landscape Waste Compost Facilities, 35 Ill. Adm. Code 830-832, due to be completed on or before December 1, 1994 pursuant to Section 22.33 of the Act, R94-1, Amendments to 35 Ill. Adm. Code 302.202, 302.208, 302.212, 302.213, 302.407, 304.122 and 304.301 (Ammonia Nitrogen, Lead and Mercury), due to be completed on or before December 5, 1994 pursuant to Section 28.2 of the Act (see order of May 5, 1994), and R94-2, Regulation of Petroleum Leaking Underground Storage Tanks, 35 Ill. Adm. Code 732, due to be completed on or before December 15, 1994 pursuant to Section 57.14 of the Act.