

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1991

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R91-36
SUBTITLE B: AIR POLLUTION) (Rulemaking)
PM-10 EPISODE REGULATIONS)

ORDER OF THE BOARD (by R. Flemal):

On its own motion the Board today opens a series of dockets to address rulemaking required by Title I of the Clean Air Act Amendments of 1990 ("CAAA"), Public Law 101-549, 104 Stat. 2399 (November 15, 1990). This particular docket is intended to address the requirements for episode regulations for PM-10. The purpose of opening this docket prior to submission of a proposal is to:

- * Facilitate the notification, as soon as possible, of all entities within the state which may have an interest in participating in this rulemaking proceeding, so that everyone may have a forum to express their views on all aspects of the timing and content of the rules.
- * Specifically solicit the views of the Illinois Environmental Protection Agency ("Agency"), the Illinois Attorney General ("AG"), the Illinois Department of Energy and Natural Resources ("DENR"), the United States Environmental Protection Agency ("USEPA"), members of the regulated community and other interest groups on the timing of this proceeding. The Board is today entering a scheduling Order which establishes a date for submission of the proposal and supporting materials. Further, it briefly describes an anticipated schedule for subsequent days for hearing, and anticipated days for Board actions. All interested persons are invited to submit comments, to be received not later than November 4, 1991, if they believe the schedule must be amended. Such comments must specify how the schedule is proposed to be amended.
- * Ensure, to the maximum extent possible, that required rulemaking will be completed in a timely fashion so that Clean Air Act sanctions can be avoided in the State of Illinois.

USEPA established the National Ambient Air Quality Standards ("NAAQS") for several criteria pollutants, including ozone. These standards were authorized pursuant to Sections 108 and 109 of the Clean Air Act, 42 U.S.C. 7408, 7409. Section 110 of the Clean Air Act requires that a State Implementation Plan ("SIP") be adopted to achieve federal air quality standards. 42 U.S.C. 7410. The rule contemplated here is intended to satisfy a part of the federal requirements for a SIP for PM-10. The 1990 Clean Air Act Amendments require Illinois to submit a PM-10 SIP by November 15, 1991, and other PM-10 regulations by 1994.

To accomplish that goal the Board is now opening a docket to establish a "compliance assurance" schedule in each area where it anticipates air pollution regulation will be required in the State of Illinois before that date. These include:

- * RACT - 25 Ton per year Sources (R91-27; J. Anderson)
- * RACT - Geographical Expansion for the Chicago CMSA (R91-28; J. Theodore Meyer)
- * RACT - Geographical Expansion for St. Louis MSA (R91-29; J.C. Marlin)
- * Stage II Vapor Recovery for Chicago and St. Louis Area (R91-30; R. Flemal)
- * Employee Trip Reduction Program (R91-31; B. Forcade)
- * Granite City SO2 Emission Limits (R91-32; J.D. Dumelle)
- * Alton SO2 Emission Limits (R91-33; M. Nardulli)
- * Southeast Chicago SO2 Emission Limits (R91-34; J. Anderson)
- * PM-10 Ambient Limits (R91-35; J. Theodore Meyer)
- * Episode Regulations for PM-10 (R91-36; R. Flemal)
- * Contingency Measures for PM-10 (R91-37; B. Forcade)

The Board requests specific comment from the participants to identify any and all other ozone or non-ozone regulatory proceedings required for submission to USEPA before November 1992. USEPA is specifically requested to provide the status of development of guidance documents for these rules which will be made available to the states. These comments must be received by the Board not later than 4:30 p.m., November 4, 1991. The Board specifically solicits comment from the Agency and USEPA on this issue for both ozone and non-ozone regulatory requirements. If additional rulemaking is required, the Board would appreciate a

citation to the federal statutory or regulatory requirements and a brief description of the rulemaking goals. The Board will also anticipate, for each rulemaking identified in the comments, opening a docket and establishing a schedule for completion that follows the concepts articulated in the schedule below.

The Board, and almost all other agencies, must comply with the provisions of the Illinois Administrative Procedure Act (APA). (Ill.Rev.Stat. 1989, ch. 127, par. 1001 et seq.) Its provisions require notice, publication, hearing, and comment prior to adoption of any rule. Additionally, the Act imposes its own requirements upon environmental rulemaking. In this instance, the Board contemplates that the regulations in this docket will be proposed and adopted pursuant to the procedures of Section 28.2 of the Environmental Protection Act ("the Act"). (Ill.Rev.Stat. 1989, ch. 111 1/2, par. 1028.2.) That section establishes adoption procedures for federally required rules.

The Board has considered rulemaking procedures under Section 28.2 of the Act before. In three of those proceedings the time required to complete the process averaged about 280 days. See, PM-10 Emissions Limits for the Portland Cement Manufacturing Plant and Associated Quarry Operations Located South of the Illinois River in LaSalle County, R91-6; RACT Deficiencies in the Chicago Area, R91-7, and RACT Deficiencies in the Metro-East Area, R91-8. In one of those proceedings the proposal was represented to be an agreed rule and in the other two, the content of the rules was largely dictated by USEPA regulations. In sum, it took roughly eight and a half to nine months to complete three relatively non-controversial rulemakings. The Board stresses that these rulemakings did not include an EcIS, which adds about five months to the rulemaking process.

SCHEDULE FOR RULEMAKING

This schedule is based on current Illinois law which was earlier amended to allow an expedited EcIS process for federally required rules. If the legislature grants relief from any current statutory requirements, the rulemaking process could be shortened accordingly.

<u>Event</u>	<u>Day Number</u>
Proposal Filed	1
Board Accepts Proposal	5-14
Give Notice to Clerk to Set Date for a Minimum of Two Hearings - 45 days before hearing date (30 days published notice for air rule)	

Board Adopts 1st Notice Opinion and Order (the Board meeting after the Board accepts the proposal)	28
1st Notice Publication	43-50
EcIS Determination - must make within 60 days after accept for hearing and allow a maximum of 6 months for the EcIS	50-65
Hearings (2)	60-90
Receipt of Transcripts (4 working days for an expedited transcript and 12 working days if not expedited)	67-97
1st Notice Expires	71-95
Post-Hearing Comment Period (2 weeks)	81-111
Give Notice to Clerk to Set Date for EcIS Hearing - 45 days before hearing date (30 days published notice for air rule)	
Preparation Time for EcIS Expires	214
EcIS Hearing	235-242
Receive EcIS Transcript	242-249
EcIS Post-Hearing Comment Period Expires	256-263
2nd Notice Opinion and Order Placed on Discussion Agenda	270-277
Board Adopts 2nd Notice Opinion and Order	284-291
Proposal Submitted to JCAR - JCAR has 45 days to review	294-301
Final Notice Opinion and Order Placed on Discussion Agenda	333-360
JCAR Review Period Ends	339-346
<u>Board Adopts Final Opinion and Order</u> (it is this final Board action, not the filing with the Secretary of State, that allows IEPA to prepare and transmit the rule to USEPA)	364

IEPA Submits Rule to USEPA -IEPA has indicated that it can submit rules to USEPA within 14 to 21 days rather than 30 days

378-385

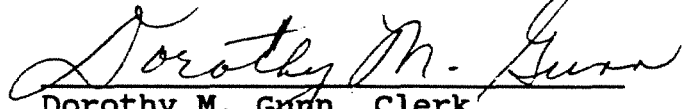
It is clear from the above schedule that a proposal should be submitted by November 15, 1991, if the Board is to meet the federal deadline for those proceedings with a November 15, 1992 due date. It is also clear from the above schedule that earlier deadlines cannot be met, certainly if an EcIS is required, or legislative or other relief is not available. If the proposal were filed with the Board by November 15, 1991, and, pursuant to Section 28.2(c), the Board would decide that an EcIS would not be needed, the resulting approximately five months extra time would still leave, at best, an extremely tight schedule for those rules with a November 1992 deadline. We must assume at the outset that an EcIS will be required and that DENR will use the full statutory six months to prepare it. The schedule only gives significant leeway if the Board makes a "no EcIS" decision. We emphasize, though, that the leeway can be taken up by the time used by the participants to address complex issues, the need to stagger final adoption of these many rules to ensure Illinois Register publication, etc. In any event, the Board must emphasize that the fundamental purpose of this Order is to alert all participants of the need to take the necessary steps to meet the federal deadlines.

As is apparent from the above discussion, time is critical. We today order that this regulatory proposal and supporting documentation be filed with the Board not later than November 15, 1991. In order to expedite first notice publication, the Board requests that filings be accompanied by a computer disk containing the proposal in WordPerfect 5.0 format.

If the participants wish to utilize the prehearing conference provisions of Section 27(a) of the Act, the hearing officer must be quickly notified. All new proceedings identified by the November 4, 1991 filings will be promptly assigned to a Board Member for handling. Phil Van Ness, the Board's Intergovernmental Affairs Attorney, will co-ordinate discussions on the status of CAAA activities of the Board. He will specifically interact with the Agency and USEPA to keep them informed of the progress being made in these regulatory 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 24th day of October, 1991, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board