

ILLINOIS POLLUTION CONTROL BOARD
February 23, 1989

IN THE MATTER OF:)
)
PETITION FOR SITE SPECIFIC)
EXCEPTION TO 35 ILL. ADM.) R88-20
CODE 215.245 FOR SIMKINS)
INDUSTRIES, INC. (CICERO PLANT))

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

Section 27(a) of the Environmental Protection Act ("Act") has recently been amended by P.A.85-1048 to give the Board exclusive authority in deciding whether an EcIS should be performed for a rulemaking. Since that change became effective January 1, 1989, Resolution 89-1 sets forth the procedure that the Board will utilize for rulemakings which were filed prior to 1989 and for which an EcIS determination had not been made by the Department of Energy and Natural Resources ("DENR"). In part, the amendments to the Act provide:

[T]he Board shall determine whether an economic impact study should be conducted. The Board shall reach its decision based on its assessment of the potential economic impact of the rule, the potential for consideration of the economic impact absent such a study, the extent, if any, to which the Board is free under the statute authorizing the rule to modify the substance of the rule based upon the conclusions of such a study, and any other considerations the Board deems appropriate. The Board may, in addition, identify specific issues to be addressed in the study.

Section 27(a) of the
Act. (as amended by
P.A.85-1048)

It is upon these criteria that the Board must make its EcIS determination in this matter.

On July 21, 1988, Simkins Industries, Inc. ("Simkins") filed a petition with the Board for site specific exception from 35 Ill. Adm. Code 215.245, Flexographic and Rotogravure Printing. As of January 1, 1989, no EcIS determination had been made in this proceeding. On January 18, 1989, pursuant to Res 89-1, the Hearing Officer requested comment on the necessity for the preparation of an EcIS in this matter. A letter from Simkins to the Hearing Officer was filed on January 27, 1989, and comments

were filed by DENR and the Illinois Environmental Protection Agency ("Agency") on February 9 and 14, 1989; respectively.

DENR requests the Board determine that the preparation of and EcIS is not necessary in this proceeding. As DENR comments:

Section 215.245 was promulgated (sic) in the R85-21, Docket B proceeding, Proposed Amendments to 35 Ill. Adm. Code 215: Flexographic and Rotogravure Printing. ... DENR conducted a study of (the R85-21B) regulatory proceeding entitled The Economic Impact of the Rotogravure and Flexographic Printing Provisions of Proposed Regulation R85-21. This study estimated the economic impact of the proposed regulations controlling the emissions of volatile organic material from certain Illinois printing establishments employing flexographic and rotogravure printing presses. ... Given that DENR had previously completed an EcIS that encompassed the adopted statewide regulation for rotogravure and flexographic printing facilities, DENR requests that the Board determine that an economic impact study should not be prepared for this site specific proposal by Simkins.

DENR further stated that although Simkins' Cicero Plant was not indicated as an impacted facility in their study, they believe that the information contained in the study would be relevant to this proceeding and submitted a copy to the Board for inclusion as an exhibit.

The Agency concurred in DENR's comments and further stated that the economic impact of the proposed rule can be adequately addressed at hearing.

After consideration of the above comments and the proposal for rulemaking, the Board presently believes that the presentation of economic information at hearing in this proceeding should be sufficient for its consideration of the economic impact of the proposed rule. The Board therefore finds that the preparation of an EcIS need not be conducted in this matter at this time.

In its letter to the Hearing Officer, Simkins stated that due to the possibility of settlement of a related matter, it does not wish to comment on the necessity of an EcIS at this time. Rather, Simkins wishes to "reserve its right pursuant to Section 27 of the [Act], to submit comments on the need for an EcIS".

In addition to the portion cited above, the Board observes that the recent amendments to Section 27(a) further require the Board make its EcIS determination within 60 days of the date the

Board accepts a proposal, and provide at least 21 days from the date the Board accepts the proposal for any person to request an EcIS be prepared or not prepared. For those cases in which an EcIS determination had not been made prior to 1989, the Board in Res 89-1 construed the amendments as requiring the Board to make an initial EcIS determination within 60 days of the effective date of the amendments, i.e. March 2, 1989, in proceedings governed by Section 27. For the 21 day comment period, the Board in Res 89-1 directed Hearing Officers to allow at least 21 days from the date of their orders for comments. The Hearing Officer in this proceeding allowed 23 days for comment. The Board finds that regardless of whether Simkins desires to comment at this time, adequate time was provided for comment. The Board further finds that it must make its determination before March 2, 1989 to be within the statutory timeframe.

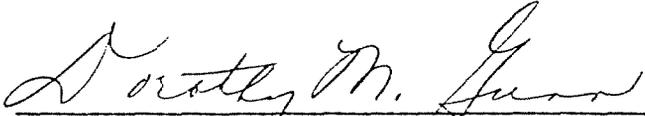
The Board further notes that the amendments provide for the Board to change its determination that an EcIS need not be prepared under specific circumstances:

...any time prior to the close of the record during the rulemaking proceeding, the Board may determine that an economic impact study be prepared, if the proposal has been substantially modified or if information in the record indicates that an economic impact study would be advisable.

The Board cautions that irrespective of the Board's ability to later request an EcIS, Simkins bears the burden to justify its site specific request, including submission of adequate economic information to so justify the request.

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 23rd day of February, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board