ILLINOIS POLLUTION CONTROL BOARD
December 6, 1984

IN THE MATTER OF:	)	
	)	
MAJOR SOURCE CONSTRUCTION	)	R81-16
AND MODIFICATION IN	)	DOCKET A
ATTAINMENT AREAS; PSD	)	

OPINION AND ORDER OF THE BOARD (by J. D. Dumelle):

On May 1, 1981 the Illinois Environmental Protection Agency (Agency) filed a regulatory proposal outlining a permit program for new and modified major stationary sources in both attainment and nonattainment areas. Merit hearings were held on July 20 and 21, 1981 in Springfield and Chicago, respectively, and again on November 2 and 6, 1981 in the same locales. Economic hearings were held on September 20 and 27, 1982 in Chicago and Springfield, the Economic Impact Study having been received on August 6, 1982. A final hearing was held on November 16, 1982 in Chicago to consider outstanding issues. At the outset of this rulemaking the subject matter was separated into two dockets. The rules pertaining to permitting new sources in attainment areas, the Prevention of Significant Deterioration (PSD) permit program, were assigned to Docket A. Docket B was reserved for the permitting rules for major sources and modifications in nonattainment areas, commonly referred to as New Source Review (NSR). The rules for permitting sources subject to NSR were adopted by the Board at 35 Ill. Adm. Code 203 on July 14, 1983 (53 PCB 45). Federal review and approval of the same is still pending. This Opinion and Order disposes of the remainder of this rulemaking, that is Docket A: PSD.

Section 110 Clean Air Act (42 U.S.C. 7401 et seq.) (hereinafter "CAA") requires that the State Implementation Plan include a permitting program for new sources which insures that (1) national ambient air quality standards are achieved and maintained, (2) that the applicability of the Section 111 new source performance standards is reviewed, and (3) that the PSD program for other states is not jeopardized by new sources [42 U.S.C. 7410(a)(2)(D)(i)and (ii); (a)(2)(E); (a)(4)]. It further provides that the Administrator shall approve a State Implementation Plan if it meets the requirements of Part C of the CAA relating to prevention of significant deterioration of air quality and visibility protection [42 U.S.C. 7410 (a)(2)(J)]

Pursuant to Section 161 of the CAA, contained in Part C, each State Implementation Plan "shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent signif-

icant deterioration of air quality in each region (or portion thereof) identified . . . as unclassified or attainment areas." Part C also contains definitions (42 U.S.C. 7479), the increments and ceilings allowable under the PSD program (42 U.S.C. 7473), and the preconstruction permitting requirements (42 U.S.C. 7475) to be included in the State Implementation Plan. The latter, Section 165, contains specific preconstruction requirements, and prohibits the construction of a new source unless a permit has been issued containing emission limits conforming to the remainder of the part. It further provides that a proposed permit be subject to review in accordance with the Section and that an analysis be conducted in accordance with the regulations promulgated by the Administrator of the United States Environmental Protection Agency (USEPA). At subparagraph (e) (3) of this Section, the Administrator is required to adopt regulations with respect to the analysis required, and is given four mandates as to the contents of those regulations, most specifically pertaining to air quality analysis.

In addition to instructing the Administrator of the USEPA, Section 165 also contains certain mandates to the owners and operators of the new sources and the reviewing authority, be it the State or the USEPA. For example, the owner or operator of the new sources is required to demonstrate that the emission from the facility will not cause or contribute to air pollution in excess of any applicable emission standard or standard of performance under the CAA and must agree to conduct necessary monitoring. Either the source's owner or operator or the reviewing authority must undertake an air quality analysis of the impacts due to the emissions from the facility and any resulting from associated growth in the area. It must be demonstrated that the facility will utilize the best available control technology (BACT) before a permit can be issued. There are, of course, other requirements such as those pertaining to increments and visibility protection included in Section 165. Most importantly subparagraph (d) (1) of Section 165 requires the State to transmit to the Administrator "a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit." [42 U.S.C. 7475 (d) (1)].

On September 9, 1980 the Environmental Protection Act (<u>Ill. Rev. Stat.</u> 1983, ch. 111½, pars. 1001 <u>et. seq.</u>) (hereinafter "Act") was amended to include Section 9.1, with the purpose of avoiding duplicative, overlapping or conflicting state and federal regulatory systems. The General Assembly found that the provisions of the CAA and the regulations adopted thereunder providing for the PSD program, among other things, could not conveniently be set forth in the Act. [Ill. Rev. Stat. 1983, ch. 111½, par. 1009.1(a)]. To insure that the new source performance standards (NSPS) of the CAA, which are a necessary part of the PSD program (c.f. 42 U.S.C. 7410) are consistent at both the state and federal

levels, the Act provides that the provisions of Section 111 of the CAA "are applicable in this State and enforceable under this Act." [Ill. Rev. Stat. 1983, ch. 111½, pars. 1009.1(b)] At Section 9.1(f) the enforcement and permitting provisions for this program are restated, and the same are provided for the national emission standards for hazardous air pollutants (NESHAP) program, the PSD program, and the NSR program. Specifically, subparagraph (f) provides that:

> No person shall:
>
> 1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act or federal regulations adopted pursuant thereto; or
>
> 2. Construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act.

The Act provides for the Board to adopt regulations identical to those promulgated by the USEPA for the NESHAPS and NSPS programs at Section 9.1(c). For the NSR program, the Act provides that the necessary regulations be adopted by October 1, 1981. The Board's actions pertaining to those rules was discussed in the July 14, 1983 Opinion and Order in Docket B, as already mentioned (53 PCB 45). As for the PSD program, the Act only provides that the Board adopt regulations establishing a permit program meeting the requirements of Section 165 of the CAA, as amended, presumably in accordance with the purpose of Section 9.1. [Ill. Rev. Stat. 1983, ch. 111½, par. 1009.1(d) and (e)].

As already discussed, Section 165 of the CAA has numerous requirements which must be specifically contained in any state plan. Likewise the federal regulations adopted thereunder, found at 40 CFR 51.18 and 51.24, must be adopted. At 40 CFR 51.18 (k) the CAA's mandate is restated:

> Each plan shall adopt a preconstruction review permit program or its equivalent to satisfy the requirements of 110(a)(2)(D)(i) of the [CAA] for any area designated as attainment or unclassifiable for any national ambient air quality standard under 40 CFR 81.300 et seq. Such a program or its equivalent shall apply to any new major stationary source or major modification that would locate in a designated attainment or unclassifi-

able area and would exceed the significant increments specified in Section III. A. of the Emission Offset Interpretation Ruling, Appendix S to this part.

[Emphasis added]

The federal regulations contained at 40 CFR 51.24 require that the state adopt definitions identical to those contained at Section 51.24(b), with the admonitions that deviations in "wording will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all . . . respects" Furthermore, throughout Section 51.24 the federal regulations begin with "The plan shall provide . . ." Not only are the areas for exercising discretionary options minimal, but as has been experienced in the NSR program, the USEPA is reluctant to approve regulations which are not identical in language, as well as in substance. Although the regulations adopted by the Board for that program were more comprehensive, coherent, and better integrated with regulations for other programs, approval of those rules deviating from the federal language is unlikely. The USEPA apparently disagrees with the flexibility provided to the owners and operators of new sources in nonattainment areas, although the applicability of the NSR program was, at the outset, more expansive than federally required. Furthermore, the flexibility was conditioned on a demonstration that the lowest emission rates would be achieved in all cases and that air quality would be improved or, at the least, maintained until emission offsets become available. In effect these requirements are more stringent than the federal requirements, and they are, especially, more stringent than the bubble for new sources being contemplated by the USEPA. Nevertheless, the USEPA is proposing to disapprove parts of the NSR regulations.

To fulfill the stated purpose of Section 9.1, the Board would have to adopt regulations identical to the federal regulations. Even if the regulations were adopted, the permit applications, proposed permits, and the review analysis would be subject to federal review pursuant to Section 165(d)(1) of the CAA. Currently the federal program is being administered by the Agency, which means that the USEPA is involved directly with the permit applications and approval process. State regulations, even if approved federally, would only serve as an unnecessary second step, delaying the process. It is unlikely that Federal review could be accomplished concurrently within the state's ninety day statutory review period. Adopting a state scheme identical to the federal scheme would thwart the purpose of the Act which is to avoid the existence of duplicative or overlapping State and federal regulatory schemes. A legislative amendment may be necessary to eliminate the PSD provisions of Section 9.1(d) so that the purpose of the entire Section is served.

Finally, major amendments to the CAA are under consideration by Congress and it is probable that the PSD program will be

affected. Until such time as the CAA is amended, Section 168 of the CAA provides for delay in adopting a PSD program as part of the Illinois State Implementation Plan. That Section provides for the federal regulations to remain in effect, which is the very program the Agency is now authorized to implement on behalf of the USEPA.

Sections 9 and 9.1 of the Act as a whole provide the necessary parts of the State Implementation Plan to satisfy the CAA. Pursuant to Section 9, all sources of air pollution must have permits and are prohibited from violating the air quality standards as adopted by the Board. Pursuant to Section 9.1 of the Act, the permits granted must insure that Section 165 of the CAA and federal regulations adopted thereunder are not violated. Combined, these sections along with the Board regulations prohibiting interstate pollution and general permitting requirements sufficiently establish a program equivalent to the PSD program outlined by the federal regulations to satisfy Sections 110, 161, and 165 of the CAA. The Board hereby dismisses Docket A of this proceeding. The information, including the Economic Impact Study, contained in the record is, of course available for another rulemaking pertaining to PSD should one prove necessary in the future.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6th day of December, 1984 by a vote of 6-0.

Dorothy M. Gunn

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Illinois Pollution Control Board