ILLINOIS POLLUTION CONTROL BOARD
March 5, 1981

IN THE MATTER OF:	)	
	)	
AMENDMENT TO CHAPTER 2, AIR POLLUTION CONTROL RULES AND REGULATIONS (PROPOSED RULE 203(j)).	)	R79-3

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On January 29, 1979 the Illinois Environmental Protection Agency filed a proposal to amend Rules 101, 103, and 105 of Chapter 2, the Board's Air Pollution Control Rules and Regulations, regarding permits, maintenance programs, replacement of control equipment, and related changes in definitions. The proposal was consolidated for purposes of hearing with two proceedings, R78-10 (fugitive particulate emission limitations) and R78-11 (particulate emissions from steel mills).

Three merit hearings, and three later economic impact hearings, were held as follows:

March 13, 1979	Chicago
March 14, 1979	Springfield
March 23, 1979	Chicago
August 6, 1979	Chicago
August 7, 1979	Springfield
August 21, 1979	Chicago

On January 6, 1981 the hearing officer granted the Agency's November 21, 1980 motion to withdraw the permit- and maintenance-related amendments, but to retain the replacement-related amendment (Rule 105(a)(3), reproposed as Rule 203(j)). The record closed on February 13, 1981. No post-hearing public comment has been received relating to this proceeding.

The Agency proposes that, in certain townships containing total suspended particulate (TSP) primary national ambient air quality standard (NAAQS) nonattainment areas, "no person shall replace the air pollution control equipment on any source or particulate matter with a less effective kind of control equipment." Several townships within eleven counties are specifically listed.

In the original proposal, the Agency sought to "cap" all emission rates after July 1, 1979 at the actual hourly maximum rates emitted from the source or the control equipment in the year 1977, although a year after 1975 could be used upon a showing that

1977 was an atypical year. All future operating permits would contain the emission limitations so referenced.

The Agency stated in its January 25, 1979 letter filing the proposal that "[u]nless existing sources in [areas with high concentrations of sources] which have found it possible to keep their emission rates at current overcompliance levels are required to continue to do so, additional, more stringent requirements will have to be imposed upon them, as well as upon new sources seeking to locate in those areas." "This need to 'codify overcompliance' has arisen because the Agency's air quality modeling has been done on the basis of projected actual emission rates rather than maximum allowable emission rates. Theoretically, [this] could permit an air quality standard violation if a source should, upon occasion, emit more than projected actual but less than the maximum allowable." This same statement, although made with reference to the maintenance-related regulatory proposal, applies equally to the "capping" of control equipment in proposed Rule 203(j) as a statement of the reason for the Agency's proposal.

TECHNOLOGICAL FEASIBILITY

Most of the testimony upon the merits of the proposed rule concerned whether it would prohibit sources from replacing equipment if emissions were increased not because of the efficiency of the equipment, but because of changes in production volume, production processes, or hours of operation (R.133-7, 423, 624-7). Other industry concerns were that it was unnecessary for an approvable State Implementation Plan (SIP), see 42 U.S.C. §7401 (R.651, 70-1(E)*); that it should not be applied in TSP attainment areas (R.644-5); that is interfered with business management and decision-making (R.643-4, 732-4, 28-9(E), 34-5(E)); that it penalized sources who are in compliance with TSP emission limitations (R.784, 18(E), 35-8(E)); and that it may make offsets unavailable for the location of new or modified sources and may withdraw credits from the offsetting sources (R.68-9, 225-7, 61-2(E)). Similarly, written comments received from various industries objected that the proposed rule would deter future overcompliance, that no improvement in air quality would result, that it is redundant of existing Agency permitting authority, and that it is inconsistent with USEPA's promotion of the use of bubbles in quantifying emission limitations.

The Agency's closing statement (R.159-0) makes it clear that the rule is intended to keep emission levels below those which are allowed by regulations in those instances in which sources presently located in nonattainment areas are "overcomplying". The Agency offered no testimony material to industry's concerns. Indeed, the author of the Institute of Natural Resource's economic impact study stated that he could not obtain an Agency response as to whether the rule would apply if production was increased, or if other changes independent of equipment replacement increased emissions, even if the increased emissions did not exceed the allowable limitation. There was disagreement within the Agency on this point (R.55-7, 68-9(E)).

*"E" designates the economic hearing transcript.

The Board finds from a reading of the record that the Agency did not show that the rule was feasible technologically. The scope of the term in the proposed rule, "less effective," as applied to the substituted equipment, was inadequately defined. It was not intended to refer to the efficiency of the equipment (R.55, 119-20, 398-410, 615-8), although that was industry's understanding (R.703-1, 732-4). If it is not to refer to efficiency, the Board is constrained to ascertain what the term is to indicate. Although the Board could adopt a rule specifying "efficiency" instead of "effectiveness", and could even prohibit replacements of any kind where emission levels would increase yet not exceed allowable levels, the Board concludes that such rule would be inequitable from a number of viewpoints.

First, the rule could inhibit the testing of newly marketed or innovative control equipment which involves replacement of existing equipment. Secondly, the rule would unfairly penalize those sources which are in compliance with the applicable TSP emission limitation. It would be unreasonable for the State to usurp the business decisions of sources which have adopted control strategies in reliance on the Board's regulations and consequently are operating well within the law; for the State to so actively impinge on business management would be an unwarranted invasion of the rights of corporate citizens. Thirdly, the rule would limit modifications of major complying sources located in nonattainment areas by eradicating credits presently available due to their overcompliance; which, under Rule 10.3 of the Agency's Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas (Rules) (§9.1(e) of the Act; see 45 Fed.Reg. 58896), are property rights; similarly, it would prohibit the location of new industry in nonattainment areas. Such matters are more properly addressed by an Agency proposal pursuant to §9.1(d) of the Illinois Environmental Protection Act, as amended September 4, 1980.

Finally, the rule apparently was proposed to facilitate the Agency's air quality demonstrations submitted with the 1979 TSP SIP revision (R.45-7, 108-11, 419-20, 427-8). However, the USEPA has stated that the rule was not necessary to approval of the 1979 TSP SIP. 45 Fed.Reg. 11480; see 45 Fed.Reg. 58896. Even if the rule were to facilitate air quality demonstrations for future TSP SIP's the adverse effects of the rule upon those sources it would apply to--those in overcompliance--are more compelling. The Agency itself recognizes this question of equity (R.420-1). Furthermore, the Agency's Rules do not necessarily prohibit a definition of allowable rates which encompasses that level actually emitted, as it provides for maximum operation and includes estimates of emissions during malfunctions, etc. In cases where replacement of equipment constitutes a "modification" of the source for purposes of these Agency Rules, proposed Rule 203(j) is duplicative of the Agency's authority. In the remainder of the cases, e.g., nonmajor sources in nonattainment areas, the fact that unacceptable TSP air quality is due in an unquantifiable measure to dust from farm land, roads, and other nonstationary, nontraditional sources (R.47-2, 1078, 236, 257-2, 273-8, 282-5) militates against the Board's adoption of the rule.

ECONOMIC REASONABLENESS

Even assuming that technological feasibility could be shown, there is no reliable evidence in the record of the costs to industry, Illinois government or Illinois citizens of the proposed rule. The author of the impact study, although explaining that dollar figures were difficult to calculate, stated that his results were not reliable because the sample of twelve sources was statistically insignificant (R.13-9, 89-91). The Agency offered no evidence of its own of the economic impact of the rule. The Board finds that the record is insufficient for purposes of a finding as to economic reasonableness.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that proceeding R79-3 be and hereby is dismissed.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 5th day of March, 1981 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board