

ILLINOIS POLLUTION CONTROL BOARD
June 30, 1988

IN THE MATTER OF:)
)
PARTICULATE EMISSION LIMITATIONS,) RES 88-2
RULE 203(g)(1) AND 202(b) OF) R82-1(B)
CHAPTER 2)

RESOLUTION IN RESPONSE TO JCAR OBJECTION.

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

This Resolution and Order constitutes the Pollution Control Board's (Board) formal response to the June 14, 1988 Objection of the Joint Committee on Administrative Rules (JCAR). Section 7.06(c) of the Administrative Procedure Act (APA) requires that an Agency respond within 90 days of an Objection. Section 7.06(c) of the APA states that, an Agency may (1) modify the proposed rule or amendment to meet the Joint Committee's Objection, (2) withdraw the proposed rule or amendment in its entirety or (3) refuse to modify or withdraw the proposed rule or amendment. For the reasons set forth below, the Board hereby refuses to modify or withdraw the proposed rules.

The JCAR objection reads, in pertinent part, as follows:

The Joint committee objects to the Pollution Control Board's rules entitled Hearing Pursuant to Specific Rules, "35 Ill. Adm. Code 106, because contrary to Section 28.1 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1028.1) the Board has issued adjusted standards pursuant to Section 28.1 and published the list of those adjusted standards in the Environmental Register but has failed to publish lists of the adjusted standards in the Illinois Register.

The Board strongly disagrees with the JCAR Objection. First, the rationale for the Objection is unrelated to the proposed rules which were before JCAR for second notice review. The proposed rules set forth procedures to be utilized whenever an adjusted standard is sought under 35 Ill. Adm. Code 212.126. The Joint Committee has no objection to the language or content of the proposed rules; however, it finds the rules objectionable because the Board allegedly has not in past years published lists of adjusted standard determinations, in the Illinois Register. The Board can only note that it has not as yet rendered any adjusted standard determination pursuant to Section 28.1 of the

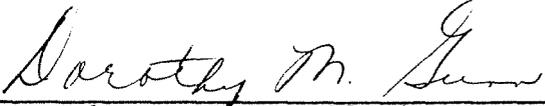
Act: when the Board adopts adjusted standard determinations under Section 28.1 of the Act, a list of those determinations will be published in the Illinois Register.

Second, the fact that the Board has not yet adopted any adjusted standard determination pursuant to Section 28.1 was conveyed to the Joint Committee. The Board offered to make any modification necessary to satisfy the Joint Committee and thus to avoid the Objection, but (1) the Joint Committee was unable to suggest any such modification and (2) no modification exists that can correct the Joint Committee's perceived problem. The Board notes that modification pursuant to Section 7.06 of the APA is thus not a practical response to the Objection: the Board is effectively precluded from utilizing this type of response. Nor can the Board in good conscience utilize the withdrawal type of response. These rules are necessary for federal approval of the state implementation plan and, moreover, provide flexibility to sources that cannot comply with the general rules. Thus, withdrawal of the rules would be contrary to the best interests of the state.

The Board does not take a Joint Committee Objection lightly. Section 7.06 of the APA sets forth the universe of possible Board responses. As neither modification nor withdrawal of the proposed rules are practical responses to the Objection, the Board's only recourse is to refuse to modify (although that is not an accurate statement) or withdraw the proposed rules. The Board regrets that this is the case, but believes that it is in the best interests of the state to do so.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Resolution was adopted on the 30th day of June, 1988 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board