

ILLINOIS POLLUTION CONTROL BOARD

June 5, 1997

IN THE MATTER OF: )  
 )  
PETITION OF ABBOTT LABORATORIES ) AS 94-5  
FOR AN ADJUSTED STANDARD FROM ) (Adjusted Standard - Air)  
35 ILL. ADM. CODE 218 SUBPART RR )

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a status report (Report) filed May 12, 1997 by Abbott Laboratories (Abbott). Abbott states that on February 14, 1994 it filed a petition for adjusted standard from 35 Ill. Adm. Code 218.Subpart RR as it applies to the emissions of volatile organic materials from Abbott's production facilities located in Lake County, Illinois. The petition was filed within 20 days of January 24, 1994, the effective date of In the Matter of: Reasonably Available Control Technology for Major Sources Emitting Volatile Organic Materials in the Chicago Ozone Nonattainment Area: 25 Tons (November 18, 1993) R93-14. Pursuant to 35 Ill. Adm. Code 106.907(b), Abbott's petition effectively stays the applicability of R93-14 until the Board makes a determination on the petition for adjusted standard.

Soon after filing its petition, Abbott entered into discussions regarding its request for relief with the Environmental Protection Agency (Agency). The parties agreed that a minor change in the existing pharmaceutical manufacturing rule, 35 Ill. Adm. Code 218.Subpart T would provide the relief that Abbott was seeking. Thereafter, the parties requested a stay of the adjusted standard proceeding pending the outcome of rulemaking R94-31, In the Matter of: 15% ROP Plan Control Measures for VOM Emissions - Part V: Control of VOM Emissions from Lithographic Printing: Amendments to 35 Ill. Adm. Code Parts 211, 218 and 219. (Report at 1.)

The Board granted the parties' request for stay of the adjusted standard proceeding, and in subsequent orders directed the parties to submit status reports. Abbott states that the Agency submitted a proposal for rulemaking on October 28, 1994 which included proposed section 218.480(i) to address Abbott's concerns. (In the Matter of: 15% ROP Plan Control Measures for VOM Emissions - Part V: Control of VOM Emissions from Lithographic Printing: Amendments to 35 Ill. Adm. Code Parts 211, 218 and 219 (May 9, 1995), R94-31. On March 12, 1997 the United States Environmental Protection Agency published in the Federal Register a direct final rule approving certain amendments to the Illinois State Implementation Plan, including the changes negotiated by the parties as described above. (62 Fed. Reg. 11327 (March 12, 1997).) The direct final rule notice stated that it would become effective on May 12, 1997 if no public comments opposing the rule were received. (Report at 2.)

Abbott states that no public comments opposing the amended pharmaceutical manufacturing rule were received; therefore, the rule became effective on May 12, 1997.

Accordingly, Abbott requests the Board to make a final determination on its adjusted standard petition pursuant to 35 Ill. Adm. Code 106.907(b). Abbott further “suggests the petition be dismissed”. (Report at 2.)

Section 106.907(b) of the Board’s procedural rules incorporates Section 28.1 of the Environmental Protection Act which states:

Within 20 days after the effective date of any regulation that implements in whole or in part the requirements of the Clean Air Act, if any person files a petition for an individual adjusted standard in lieu of complying with the regulation, such source will be exempt from the regulation until the Board makes a final determination on the petition. If the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the sources shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition.

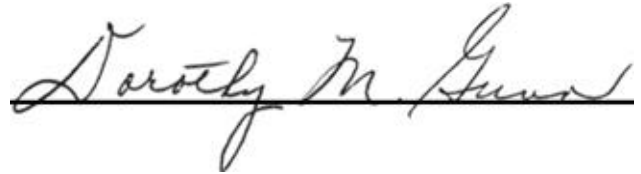
(35 Ill. Adm. Code 106.907(b) (1994).) The Board notes initially that, although Abbott cited to Section 106.907(b) in requesting the Board to dismiss its petition, this section does not have a provision whereby the Board can dismiss a pending adjusted standard. However, since Abbott’s petition was filed within 20 days of the effective date of R93-14, Abbott is correct that Section 106.907(b) exempted Abbott from complying with R93-14 until the Board made a determination in the adjusted standard proceeding. Abbott now seeks dismissal of its adjusted standard petition because it claims that newly effective R94-31 gives it the regulatory relief it seeks.

Although the Board acknowledges the parties’ statements set forth in this and previous status reports that R94-31 provides Abbott the regulatory relief it seeks, without a full record before it, including a hearing as required in petitions for adjusted standard from air regulations, the Board can make no such finding. However, based on the parties’ statements the Board will dismiss the petition and close the docket in this matter.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration.")

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of June, 1997, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board