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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 17 2004

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
 )  
AMENDMENTS TO THE BOARD'S )  
PROCEDURAL RULES TO ACCOMMODATE )  
NEW STATUTORY PROVISIONS: )  
35 ILL. ADM. CODE 101-130 )

R 04-24  
(Procedural Rulemaking)

PC#1

NOTICE

TO: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Richard McGill, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601

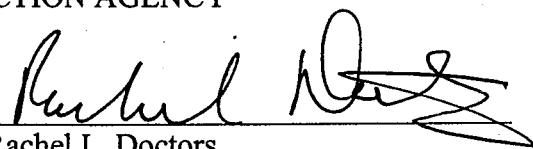
LaDonna Driver  
Hodge Dwyer Zeman  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, Illinois 62705-5776

Robert Messina, General Counsel  
Illinois Environmental Regulatory Group  
3150 Roland Avenue  
Springfield, Illinois 62703

PLEASE TAKE NOTICE that I have filed with the Office of the Pollution Control Board the COMMENTS BY ILLINOIS ENVIRONMENTAL PROTECTION AGENCY on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Date: June 15, 2004

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: 

Rachel L. Doctors  
Assistant Counsel  
Division of Legal Counsel

1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
217/782-5544

THIS FILING IS SUBMITTED ON  
RECYCLED PAPER

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JUN 17 2004

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
AMENDMENTS TO THE BOARD'S ) R04-24  
PROCEDURAL RULES TO ) (Procedural Rulemaking)  
ACCOMMODATE NEW STATUTORY )  
PROVISIONS: 35 ILL. ADM. CODE 101-103 )

COMMENTS BY ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

The Illinois Environmental Protection Agency ("Agency") appreciates this opportunity to comment on the Illinois Pollution Control Board's ("Board") proposed amendments to its procedural rules in R04-24. The Agency supports the Board's proposed amendments, but has comments on the following three topics: 1) required number of copies; 2) updating incorporations by reference; and 3) provisional variances.

Section 101.302(h) Filing of Documents

Section 5 of the Illinois Environmental Protection Act ("Act") was amended to reduce the number of Board members from seven to five. The Board in its proposal notes that this reduces the number of votes needed for a majority vote. Correspondingly, it should also reduce the number of copies that parties should be required to file by two, from 10 total to 8 total. Such a change would reduce both the administrative burden associated with assembling extra copies, as well monetary costs associated with making the copies. The Agency recommends the following amendment:

Unless the Board or its procedural rules provide otherwise, all documents must be filed with a signed original and 7 9 duplicate copies (~~8~~10 total) except that...

Section 102.211(e) Incorporations by Reference:

Section 28.6 of the Act was amended to streamline the process for updating incorporations by reference. The amendments eliminate the requirement that the procedures set forth in Sections 27 and 28 of the Act must be followed. These procedures included the requirement that the Board hold at least two public hearings. Usually updating an incorporation by reference is noncontroversial, due to the fact that it involves using newer materials or improved test methods.

Some rules adopted by the Board for the control of air pollution have been adopted for the purposes of meeting federal Clean Air Act requirements, and as such may be part of a State Implementation Plan ("SIP"). The hearings which the Board proposes to forgo under these proposed procedures may make the SIP revision containing an updated incorporation by reference unapprovable by U.S. EPA, as the applicable federal procedures require that prior to U.S. EPA's approval of a SIP or a revision to a SIP, that the State hold a public hearing on the contents of the plan including any rules that are included. 40 CFR51.20(a).

Section 28.6 of the Act does not appear to preclude the possibility that the Board could hold a hearing on a proposal to update incorporations by reference, only that such hearings would no longer automatically be required. The Illinois EPA recommends that the language in subsection (c) of this Section be amended to include the possibility that a hearing could be held and still make use of the new streamlined regulatory process, e.g., forgo the requirement that Department of Commerce and Economic Affairs conduct an economic analysis:

- c) *Sections 27 and 28 of the Act [415 LCS 5/27,28] do not apply to rulemaking under this Section. [415 ILCS 5/28.6(c)] Accordingly, for rulemaking under this Section, the Board will not necessarily hold any public hearings nor will it request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed amendment.*

Part 104.Subpart C Provisional Variances:

Pursuant to amendments to Section 37(b) of the Act authorizing the Agency to grant provisional variance requests, the Board is proposing to amend Subpart C of Part 104 to reflect that it no longer has this authority and that such petitions should be directed to the Agency. The Agency notes that it is in the process of updating its procedural rules at 35 Ill. Adm. Code 180 to reflect this amendment to Section 37(b) of the Act. The Agency recommends that as an aid to petitioners that the Board's procedural rules include a cross-reference to these procedural rules:

Section 104.304      Initiating a Request

*Any person seeking a provisional variance pursuant to Section 35(b) of the Act and 35 Ill. Adm. Code 180 shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request.....*

Respectfully submitted by:



Rachel Doctors  
Assistant Counsel  
Illinois Environmental Protection Agency

Dated: June 15, 2004

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF SANGAMON )

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Comments by Illinois Environmental Protection Agency upon the person to whom it is directed, by placing it in an envelope addressed to:

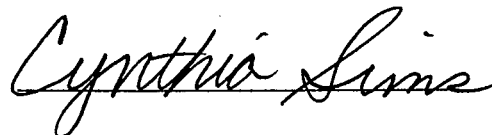
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Robert Messina, General Counsel  
Illinois Environmental Regulatory Group  
3150 Roland Avenue  
Springfield, Illinois 62703

and mailing it by First Class Mail from Springfield, Illinois on June 15, 2004, with sufficient postage affixed.



SUBSCRIBED AND SWORN TO BEFORE ME

this 15<sup>th</sup> day of June, 2004

Brenda Boehner  
Notary Public



**THIS FILING IS SUBMITTED ON RECYCLED PAPER**