

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM:) R06-22
AMENDMENTS TO 35 ILL.) (Rulemaking – Air)
CODE PART 217)

RESPONSE TO MOTION FOR RECONSIDERATION AND CLARIFICATION OF THE
ILLINOIS POLLUTION CONTROL BOARD'S AUGUST 20, 2009 ORDER

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through its attorneys, and pursuant to 35 Ill. Adm. Code 101.500 and 102.212(a) and (d), hereby files a response to Motion for Reconsideration and Clarification of the Illinois Pollution Control Board’s August 20, 2009 Order, and, respectfully requests that the Illinois Pollution Control Board (“Board”) to dismiss these Motions. In support of its Response, the Illinois EPA states as follows:

I. Procedural History

1. On August 3, 2009, Illinois Environmental Regulatory Group (“IERG”) filed a MOTION FOR EMERGENCY RULE and MOTION FOR EXPEDITED ACTION ON THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP’S ALTERNATIVE PROPOSAL.

2. On August 6, 2009, the Board directed participants to file responses to the motions no later than Thursday, August 13, 2009. The Illinois EPA filed a response on August 13, 2009, and IERG filed a Response to that Response

3. On August 20, 2009, the Board denied IERG’s Motions for Emergency Rulemaking. In pertinent part, the Board held that IERG has not persuasively argued that Section 9.9 of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/9.9) authorizes IERG to propose a trading program. Bd. Op. at 33.

4. On September 13, 2009, IERG filed a Motion for Reconsideration and

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Clarification arguing that the Board had misapplied the law when IERG's Motions for Emergency Rulemaking were denied.

5. On September 24, 2009, the Illinois EPA received a letter from USEPA indicating that units have no obligation to hold NO_x allowances equal to the amount of ozone season emissions.

6. On September 28, 2009, the Illinois EPA filed Motion to File Instanter and Motion for Extension to File a Response.

7. On October 1, 2009, the Hearing Officer granted an extension until October 13, 2009.

8. On October 14, 2009, the Illinois EPA filed a Motion to File Instanter and Motion for Extension to File a Response until October 26, 2009.

9. On October 15, 2009, IERG withdrew its request for reconsideration but not clarification. Specifically, IERG asked for clarification of "whether the Board will accept a rulemaking proposal proposed pursuant to Section 9.9 of the Act from parties other than the Illinois EPA." (Motion to Withdraw at Section III at p. 4 and Motion for Reconsideration at Section V at p. 14).

10. On October 23, 2009, the Hearing Officer granted an extension until October 26, 2009.

II. Standard for Statutory Interpretation

11. It is well founded that reviewing courts will give statutory language its plain and ordinary meaning, and where a statute is clear and unambiguous, it must be enforced as written without resort to further aids of statutory construction. *Town and Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill.2d 103, 117, 310 Ill. Dec. 416, 866 N.E.2d 227 (2007).

Courts may not depart from the statute's plain language by reading into it exceptions, limitations, or conditions not expressed therein. *Id.*

III. IERG Lacks Authority Under Section 9.9 of the Act to Propose Regulations

12. This statute is clear, when it states that: “the Agency shall propose and the Board shall adopt regulations to implement” 415 ILCS 5/9.9(b). Statutes are to be read as written if they are clear on their face. There can be no alternate interpretation of this phrase to give authority to other entities to propose regulations citing Section 9.9 of the Act as their authority. Where a statute specifically states who is authorized to take action, it implicitly excludes others from asserting that authority. Only the Illinois EPA, and not IERG or any other entity, is authorized to propose regulations pursuant to Section 9.9 of the Act. The Illinois EPA respectfully concludes IERG may not propose a regulation pursuant to Section 9.9 of the Act due to a clear lack of statutory authorization.

CONCLUSION

WHEREFORE, for the reasons stated above, the Illinois EPA respectfully requests that the Board find that IERG lacks the authority to propose regulations pursuant to Section 9.9 of the Act.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: /s/ _____

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