

ILLINOIS POLLUTION CONTROL BOARD

January 10, 2008

IN THE MATTER OF:)
)
SECTION 27 PROPOSED RULES FOR) R07-19
NITROGEN OXIDE (NO_x) EMISSIONS) (Rulemaking - Air)
FROM STATIONARY RECIPROCATING)
INTERNAL COMBUSTION ENGINES AND)
TURBINES: AMENDMENTS TO 35 ILL.)
ADM. CODE PARTS 211 AND 217)

ORDER OF THE BOARD (by A.S. Moore):

On December 20, 2007, the Illinois Environmental Protection Agency (Agency) filed a “Motion to Proceed with Amended Proposal and Withdraw Testimony” (Mot.). The Agency states that “the basis and scope of this [amended] regulatory proposal is significantly narrower with the adoption of R07-18 and the limited geographic applicability.” Mot. at 4. Specifically, the Agency moves that the hearing officer proceed to schedule hearings on the amended proposal and that previously-submitted testimony be withdrawn from the record. On January 3, 2008, the Illinois Environmental Regulatory Group (IERG) filed its response. The Board today grants the Agency’s motion and directs the hearing officer to proceed to hearing on the amended proposal. The Board also grants the Agency’s motion to withdraw testimony.

Below, the Board provides an abbreviated procedural history before providing a brief summary of the amended proposal and the motion to withdraw testimony. After summarizing IERG’s response, the Board addresses the Agency’s motion and reaches its conclusion.

ABBREVIATED PROCEDURAL HISTORY

On April 6, 2007, the Agency filed a rulemaking proposal intended to reduce emissions of nitrogen oxides (NO_x) from stationary reciprocating engines and turbines, which the Board docketed as R07-18. In an order dated May 17, 2007, the Board concluded that the Agency’s entire proposal was not “required to be adopted” by the Clean Air Act (CAA) under Section 28.5 of the Environmental Protection Act (Act). 415 ILCS 5/28.5 (2006). Accordingly, the Board bifurcated the proposal by continuing to consider, in docket R07-18, only the portion applicable to the 28 internal combustion engines affected by the NO_x State Implementation Plan (SIP) Call Phase II under Section 28.5 “fast-track” procedures. The Board directed the publication of the remainder of the Agency’s proposal for first notice under the general rulemaking provisions of Sections 27 and 28 of the Act (415 ILCS 5/27, 28 (2006)) in docket R07-19 without commenting on the merits of the proposal. The Board adopted final rules in R07-18 on September 20, 2007. *See Fast-Track Rules Under Nitrogen Oxide (NO_x) SIP Call Phase II: Amendments to 35 Ill. Adm. Code Section 201.146 and Parts 211 and 217, R07-18 (Sept. 20, 2007); see also 31 Ill. Reg. 14254-71 (Oct. 12, 2007).*

On June 15, 2007, the hearing officer issued an order in R07-19 scheduling a first hearing beginning September 18, 2007 in Springfield with prefiled testimony due to be filed by August 27, 2007, and prefiled questions based on that testimony due to be filed by September 10, 2007. The same order scheduled a second hearing beginning November 5, 2007 in Chicago with prefiled testimony due to be filed by October 15, 2007, and prefiled questions based on that testimony due to be filed by October 29, 2007.

On August 23, 2007, the Agency filed a motion to cancel the scheduled hearings and associated prefiling deadline. In an order dated August 27, 2007, the hearing officer granted the motion. At the direction of the hearing officer, the Agency has since filed two status reports, a first on October 31, 2007, and a second, on November 19, 2007, which indicated that the Agency would file an amended proposal with the Board before the end of December 2007.

On December 20, 2007, the Agency filed its “Motion to Proceed with Amended Proposal and Withdraw Testimony.” On January 3, 2008, IERG filed its response (Resp.).

SUMMARY OF AMENDED PROPOSAL

The Agency states that proceeding with the amended proposal will partly satisfy Illinois’ obligation to meet the CAA’s requirement under the 8-hour National Ambient Air Quality Standard (NAAQS) for NO_x reasonably available control technology (RACT) and would improve air quality by reducing precursors for fine particulate matter (PM_{2.5}). Mot. at 1. Specifically, the Agency proposes to control NO_x emissions from engines and turbines at 100 ton per year sources, or RACT units located either in the greater Chicago or Metro-East/St. Louis nonattainment areas, based on the originally proposed capacity thresholds. *Id.* The Agency states that its amended proposal differs from the original proposal in six ways. Mot. at 3.

The Agency states that it is not filing an amended Statement of Reasons with its amended proposal. However, the Agency has submitted an amended Technical Support Document (TSD). In addition, the Agency lists five issues and requests that, where those issues are discussed in the Statement of Reasons in a manner that differs from the amended TSD, “the facts in the amended TSD should be the facts relied upon.” Mot. at 3.

MOTION TO WITHDRAW TESTIMONY

The Agency “requests that all the testimony submitted in support of the original proposal (R07-18) on May 11, 2007, and subsequently included by the Board on the docket for this rulemaking, be withdrawn as the basis and scope of this regulatory proposal is significantly narrower with the adoption of R07-18 and the limited geographic applicability.” Mot. at 4. In addition, the Agency requests that the hearing officer and participants hold a conference call in order to establish hearing dates for the amended proposal.

IERG RESPONSE

In its response, IERG expresses agreement with the Agency’s request that the hearing officer and participants hold a conference call in order to establish hearing dates and prefiling

deadlines for the amended proposal. Resp. at 1. IERG requests that it participate in that call. *Id.* IERG's response did not address the Agency's motion to withdraw testimony. *See* Resp.

The Board has received no other response to the Agency's motion.

CONCLUSION

The Board first grants the Agency's motion to proceed with the amended proposal and directs the assigned hearing officer to proceed under the rulemaking provisions of the Act and the Board's procedural rules. *See* 415 ILCS 5/27, 28 (2006); 35 Ill. Adm. Code 102. As the Board on May 17, 2007, sent a proposal to first notice in this docket (31 Ill. Reg. 7702 (June 8, 2007)), the Board will determine in the course of this proceeding whether to file a second proposal for first notice. *See* 5 ILCS 100/5-40(e) (one-year deadline).

The Board also grants the Agency's motion to withdraw testimony submitted in support of the original proposal on May 11, 2007, and subsequently incorporated into the record of this proceeding. The Board directs the Clerk to withdraw the specified testimony from the record of this proceeding.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 10, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board