

ILLINOIS POLLUTION CONTROL BOARD
January 24, 2008

IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL. ADM. CODE) R08-17
PART 223 STANDARDS AND) (Rulemaking - Air)
LIMITATIONS FOR ORGANIC MATERIAL)
EMISSIONS FOR AREA SOURCES)

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

On January 2, 2008, the Illinois Environmental Protection Agency (Agency) filed a proposal under the general rulemaking provisions of Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2006)). A motion for waiver of requirements accompanied the proposal. Generally, the Agency proposes a new 35 Ill. Adm. Code 223 to reduce volatile organic material (VOM) emissions from various consumer products, architectural and industrial maintenance products, and aerosol coatings. The Board accepts the proposal for hearing today, grants the Agency's request for waiver of requirements, and directs the hearing officer to proceed to hearing in this matter.

SUMMARY OF AMENDED PROPOSAL

In support of its proposal to reduce VOM emissions from various consumer products, architectural and industrial maintenance products, and aerosol coatings, the Agency submitted a Statement of Reasons (Statement) and a Technical Support Document.

The Agency states that, effective July 17, 1997, the United State Environmental Protection Agency (USEPA) revised the national ambient air quality standard (NAAQS) for ozone from 0.120 parts per million (ppm) to 0.080 ppm. Statement at 1. In addition, USEPA increased from one hour to eight hours the time period used as the basis for compliance with the NAAQS for ozone. *Id.* at 1-2.

The Agency claims that, while many large sources of VOM in the State are already regulated, Illinois requires additional control measures to achieve compliance with the eight-hour ozone NAAQS. Statement at 4. The Agency states that it proposed this rulemaking in order to attain the ozone NAAQS by 2010 and to protect the health of the State's citizens. *Id.* The Agency claims that combined VOM emissions from consumer products, architectural and industrial maintenance coatings, and aerosol coating products "account for approximately 9.86% of all anthropogenic VOM emissions in the State of Illinois." *Id.* at 5. The Agency argues that this proposed rulemaking would reduce VOM emissions by approximately 28.5 tons per day and slightly more than 10,000 tons on an annual basis. *Id.*

MOTION FOR WAIVER OF REQUIREMENTS

In its motion (Mot.), the Agency notes that the Board's procedural rules require filing the original and nine copies of its regulatory proposal with the Board's Clerk. Mot. at 1, citing 35 Ill. Adm. Code 102.200. Because the entire proposal contains approximately 1,000 pages, the Agency

requests that it be allowed to file the original and four complete copies of the proposal plus five partial copies, the partial copies consisting of the Table of Contents, Statement of Reasons, Technical Support Document, pleadings, and the proposed rule absent documents relied upon and incorporations by reference. *Id.*

The Agency further notes that the Act requires it to provide information supporting its regulatory proposal. Mot. at 1, citing 415 ILCS 5/27(a) (2006). The Agency states that Attachment A lists documents it relied upon in drafting that proposal. *Id.* at 1-2. Because of the number and length of those documents, the Agency requests that the Board waive the normal copy requirements and allow filing an original and four copies of documents listed in Attachment A. *Id.* at 2.

In addition, the Agency states that the Illinois Administrative Procedure Act allows an agency to "incorporate by reference the regulations, standards and guidelines of an agency of the United States or a nationally recognized organization or association without publishing the incorporated material in full." Mot. at 2, citing 5 ILCS 100/5-75(a) (2006). The Agency further states that the agency adopting a regulation must maintain a copy of the authority incorporated by reference and make it available to the public upon request. Mot. at 2, citing 5 ILCS 100/5-75(b) (2006). The Agency claims that the documents it has incorporated by reference in this proposal "are readily accessible to, or are already within the possession of the Board." Mot. at 2. Accordingly, the Agency requests that the Board waive the requirements of its procedural rules and allow the Agency not to file specified documents marked by an asterisk in Attachment B. *Id.*, citing 35 Ill. Adm. Code 102.200. Due to the large number of documents in Attachment B that are not so marked, the Agency also requests that it be allowed to file an original and four copies of the remaining documents in Attachment B. Mot. at 2.

CONCLUSION

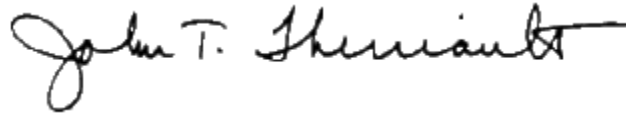
The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102. The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed to hearing under the rulemaking provisions of the Act and the Board's procedural rules. 415 ILCS 5/27, 28 (2006); 35 Ill. Adm. Code 102. After conducting one or more hearings on this proposal, the Board will determine whether to proceed to first notice.

The Board grants the Agency's motion for waiver of requirements. The Board allows the Agency to file an original and four complete copies of its proposal, plus five partial copies consisting of the Table of Contents, Statement of Reasons, Technical Support Document, pleadings, and the proposed rule. In addition, the Board allows the Agency to file an original and four copies of the documents listed in Attachment A to its proposal. The Board also allows the Agency not to file specified documents marked with an asterisk in Attachment B to its

proposal. Finally, the Board allows the Agency to file an original and four copies of the remaining documents listed in Attachment B.

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 24, 2008, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board