

ILLINOIS POLLUTION CONTROL BOARD  
February 5, 2009

IN THE MATTER OF: )  
)  
AMENDMENTS TO 35 ILL. ADM. CODE ) R09-10  
225: CONTROL OF EMISSIONS FROM ) (Rulemaking - Air)  
LARGE COMBUSTION SOURCES )  
(MERCURY MONITORING) )

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

On January 14, 2009, the Illinois Environmental Protection Agency (Agency) filed a motion for waiver of copy requirements (Mot.).<sup>1</sup>

In its motion, the Agency states that the Illinois Administrative Procedure Act (IAPA) 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 1, citing 5 ILCS 100/5-75(a) (2006). The Agency further states that the IAPA requires that an 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 1, citing 5 ILCS 100/5-75(b) (2006). Also in its motion, the Agency notes that its second *errata* sheet proposes to incorporate specified provisions of the Code of Federal Regulations (CFR) and one American Society for Testing and Materials (ASTM) standard, ASTM D6722-01, Standard Test Method for Total Mercury in Coal and Coal Combustion Residues by Direct Combustion Analysis. Mot. at 1, citing 40 CFR Part 60, Appendices A-2 through A-8 (2005) (Test Methods); 40 CFR Part 75 (2006) (Continuous Emission Monitoring).

With regard to the ASTM standard, the Agency requests that the Board waive its copy requirements and allow the Agency to file only the original of the standard proposed for incorporation by reference. Mot. at 2, citing 35 Ill. Adm. Code 102.200. The Agency states that “[t]he ASTM standards are copyright protected” and that it incurs costs in providing copies to the Board. Mot. at 2. In order to avoid additional costs, the Agency requests that the Board waive the copy requirements of 35 Ill. Adm. Code 102.200. *Id.* The Agency notes that it has attached a copy of ASTM’s Licensing Agreement and “directs the Board’s attention to that document so that the Board may conform its handling of the standards consistent with that Agreement.” Mot. at 2.

The Agency also requests that it not be required to submit copies of the provisions of the CFR that its second *errata* sheet proposes to incorporate by reference. Mot. at 2. The Agency argues that this request is consistent with the requirements of the IAPA and is “reasonable in light of the fact that these documents are quite lengthy and are readily available.” *Id.*, citing 5 ILCS 100/1-1 *et seq.* (2006).

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<sup>1</sup> The Board notes that the Agency on the same date also filed post-hearing comments and its second *errata* sheet.

The Board notes that Section 101.500(d) of its procedural rules provides in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Board has received no response to the Agency’s motion for waiver of filing requirements.

The Board grants the Agency’s motion for waiver of filing requirements. First, the Board allows the Agency to file only an original of the ASTM standard proposed for incorporation by reference in its second *errata* sheet. The Board reserves ruling on the proper handling of the documents. Second, the Board allows the Agency not to submit copies of the provisions of the CFR cited in its second *errata* sheet.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 5, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board