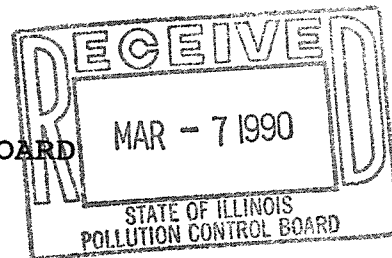


BEFORE THE ILLINOIS POLLUTION CONTROL BOARD



IN THE MATTER OF:)
)
RACT DEFICIENCIES -) R89-16 (A)
AMENDMENTS TO 35 ILL. ADM.)
CODE PARTS 211 and 215)

NOTICE OF FILING

TO:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(FEDERAL EXPRESS)

Mr. Dan L. Siegfried, Hearing Officer
Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(FEDERAL EXPRESS)

PERSONS ON ATTACHED LIST
(FIRST CLASS MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and ten copies of the Illinois Environmental Regulatory Group Response to Agency Motion to Strike the Post-Hearing Comments of IERG, on behalf of the Illinois Environmental Regulatory Group, a copy of which is herewith served upon you.

Respectfully submitted,

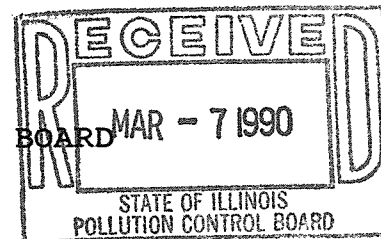
ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

By: Kath. D. Hodge
Katherine D. Hodge

Dated: March 6, 1990

Katherine D. Hodge
General Counsel
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, IL 62701
217/522-5512

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD



IN THE MATTER OF:)
)
RACT DEFICIENCIES -) R89-16 (A)
AMENDMENTS TO 35 ILL. ADM.)
CODE PARTS 211 and 215)

ILLINOIS ENVIRONMENTAL REGULATORY GROUP RESPONSE TO STRIKE
THE POST HEARING COMMENTS OF IERG

NOW COMES the Illinois Environmental Regulatory Group (IERG), by its attorney, Katherine D. Hodge, and files this response and opposition to the Illinois Environmental Protection Agency's (IEPA) Motion to Strike the Post-Hearing Comments of IERG, dated February 26, 1990, and received by IERG on February 28, 1990.

IERG contends that the point of a rulemaking proceeding is to come up with the best rule and to consider all available input to reach that end. IERG agrees that participants should always attempt to meet all deadlines; however, that is just not always possible due to press of business and other critical reasons. A rulemaking proceeding should not be a procedural game whereby a party can keep an interested person from commenting on a rule simply based on a technicality.

IERG, in the Comments which are the subject of this motion, made the point that these rules should not be applied statewide as they are neither required to apply statewide, nor does statewide application make sense, as had been asserted by IEPA. The substance of IERG's comment in this regard occurs in two paragraphs which state:

"In their post-hearing comments, the Agency addresses the issue of state-wide applicability and concedes that both it and USEPA have acknowledged that statewide applicability is

not federally required. The Agency goes on to boldly assert that statewide applicability will not have significant impact upon industry. The Agency provides no detail nor support for this assertion. Incredulously, the Agency next states that statewide applicability is a matter of common sense. As many, if not most, of the RACT rules presently on the books in Illinois apply only in nonattainment areas, IERG simply does not understand how statewide applicability for these provisions is a matter of "common sense".

This is especially true in view of the discussion which the Agency next includes in its comments regarding proposed regulations for bulk gasoline plants. In the regulation, the "load in" vapor balance system applicability/exemption requirements apply statewide, but the "load out" vapor balance system applicability/exemption requirements apply only in 13 specified counties. Some of those counties are attainment counties and some of the counties are neither in the Chicago metropolitan area nor in the East St. Louis Metropolitan area. IERG simply does not understand how it can be "common sense" to have certain rules apply statewide, and at the same time have a rule which has two particular provisions that apply in two totally different geographic areas governing the exact same operation."

The IEPA, in its Motion to Strike, does not provide any substantive reason why this comment by IERG is inaccurate or incorrect. Instead, IEPA simply asserts that the comment was not timely filed and that IERG somehow took "unfair advantage" by its late filing. IEPA alternatively moved to strike the above quoted sections of the comments, even if the Board declines to strike the Comments in their entirety. The IEPA provided no justification for this other than the untimeliness of the filing. The IEPA does not explain, and IERG submits, cannot explain the total inconsistency in their position which was noted by IERG in the above-quoted comment.

Thus, it is the IEPA's position that even though IERG pointed out a glaring inconsistency in the IEPA position on statewide applicability, this should be ignored in a rulemaking proceeding because of a technicality, and the rule should apply statewide,

even though there is no justification for statewide applicability which can, even at this juncture, be provided by the IEPA.

IERG filed their Comments after the deadline for this filing. That much is certainly true. IERG filed those comments with a Motion to File Instanter in which it included a few reasons why IERG was unable to file the comments in a timely fashion. There were other reasons which were not included, because it is IERG's observation that these motions are routinely granted by the Board and IERG did not want to burden the Board with unnecessary paperwork. In addition to the reasons given in the Motion to File Instanter, counsel for IERG at the time these comments were due was involved in several other projects, including the preparation of a witness and the presentation of testimony at the hearing in R89-14 on February 14, 1990, and the preparation of written comments in R88-21 (B). These activities, in addition to the need to coordinate the comments with IERG's member companies, virtually prohibited IERG's filing of the comments in this docket by the deadline set by the Board. IERG has stated many times, most recently in the Board's docket R88-5 (B) on Procedural Rules, that deadlines have to be realistic and must consider other deadlines in on-going proceedings at the Board.

Finally, IERG submits that its late filing of these Comments will not delay these proceedings. IERG submits that even if it had timely filed its comments, after it had seen the Agency's comments regarding the statewide applicability of these rules, it would have requested leave to file additional comments to respond to the Agency's position in that regard. Because of the nature

of these proceedings, IERG submits that the Board would likely have allowed IERG to file the comments regarding statewide applicability at that juncture. In sum, this is a rulemaking proceeding, not an adversarial proceeding, and the Board should encourage participation in its process, especially participation which does not delay its ultimate decision making, and should not discourage participation through the use of technicalities such as the IEPA's Motion to Strike submitted here.

WHEREFORE, for the foregoing reasons, IERG respectfully requests that the Board deny IEPA's Motion to Strike IERG's Comments.

Respectfully submitted,

Illinois Environmental
Regulatory Group



By: Katherine D. Hodge,
Its Attorney

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(217) 522-5512

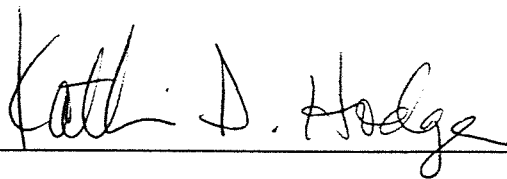
CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Illinois Environmental Regulatory Group Response to Agency Motion to Strike the Post-Hearing Comments of IERG in R89-16 (A), upon the following persons:

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(FEDERAL EXPRESS)

Mr. Dan L. Seigfried, Hearing Officer
Illinois Pollution Control Board
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(FEDERAL EXPRESS)

PERSONS ON ATTACHED LIST
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