

ILLINOIS POLLUTION CONTROL BOARD

September 3, 1992

IN THE MATTER OF:)
)
TOXIC AIR CONTAMINANTS LIST) RES 92-1
(35 Ill. Adm. Code 232)) R90-1 (A)

IN THE MATTER OF:)
)
TOXIC AIR CONTAMINANTS LIST,) R90-1 (D)
STYRENE (35 Ill. Adm.)
Code 232.Appendix A))

RESOLUTION AND ORDER OF THE BOARD (by J. C. Marlin):

In Docket R90-1 A, the Pollution Control Board (Board) proposed to add to its rules a list of 264 toxic air contaminants as mandated by Section 9.5(c) of the Environmental Protection Act (Act).¹ (Ill. Rev. Stat. 1991, ch. 111 1/2 par. 1009.5(c)). The proposed new rules (35 Ill. Adm. Code 232) were considered by the Joint Committee on Administrative Rules (JCAR or Joint Committee) at its July 14 and at its August 11, 1992 meeting. JCAR issued an objection to the listing of one chemical, styrene. (16 Ill. Reg. 13372, August 28, 1992.)

This resolution and order constitutes the Board's formal response to JCAR's August 11, 1992 objection to 35 Ill. Adm. Code 232.Appendix A. Section 7.07(c) of the Administrative Procedure Act (IAPA) requires that an agency respond within 90 days of an objection. Section 7.06(c) of the IAPA states that, an agency may (1) modify the proposed rule or amendment to meet the Joint Committee's objection, (2) withdraw the proposed rule or amendment in its entirety or (3) refuse to modify or withdraw the proposed rule or amendment. (Ill. Rev. Stat. 1991, ch. 127, par. 1007.06(c)) For the reasons set forth below, the Board hereby modifies the proposed rules by deletion at this time of the chemical styrene from the list of toxic air contaminants. However, the Board also today opens a new subdocket D in this proceeding for continued deliberation of a proposed styrene listing. The Board will issue a separate order in Docket D establishing procedures for further deliberation in the near future.

These rules were proposed for first notice by the Board's opinion and Order of April 26, 1990, and were published in the Illinois Register on June 8, 1990. (14 Ill. Reg. 8905). A second first notice proposal was adopted on September 26, 1991 and published in the Illinois Register on October 18, 1991 (15 Ill. Reg. 14969.) The Board proposed these rules for second notice in its opinion and order of June 4, 1992.

0135-0625

THE OBJECTION

The JCAR objection is set forth below in its entirety:

At its meeting on August 11, 1992, the Joint Committee on Administrative Rules objected to the Pollution Control Board's rulemaking entitled Toxic Air Contaminants (35 Ill. Adm. Code 232) because in failing to review and evaluate fully all of the relevant material submitted concerning the listing of the chemical styrene as a toxic air contaminant, the Pollution Control Board acted contrary to Section 5.40(a) of the Illinois Administrative Procedure Act. Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed to be a refusal to respond under the Administrative Procedure Act and shall constitute withdrawal of this proposed rulemaking. (16 Ill. Reg. 13372.)

BOARD RESPONSE

Concerns about the styrene listing were expressed by members of JCAR at its July 14 meeting, and were the subject of discussions between Board and JCAR staff prior to the August 11 meeting at which the Committee voted the objection. The Board learned that a 12 page comment was submitted to JCAR by the Styrene Information and Research Center (SIRC) on July 14, 1992; the Agency filed a responsive comment with JCAR on August 10, 1992. These documents are not formally before the Board at this time, but will be entered into the record in Docket D and considered in more detail in that proceeding.

At issue is whether the Board fully considered all of the technical documents and arguments presented by SIRC concerning the listing of styrene, including those related to mutagenicity and toxicity. The Agency had proposed the listing of styrene, which was the subject of hearing testimony and written comment. The Board had proposed deletion of the styrene listing in its second first notice opinion (September 26, 1991, p. 18). However, as urged by the Agency, the Board proposed to retain it on the list at second notice (June 4, 1992, p. 13-16).

The Board does not take an objection from the Joint Committee lightly, particularly where the objection reflects concern as to whether the Board has acted within its statutory authority. In its deliberations, the Board makes every attempt to ensure careful review of the relevant information before it. While the Board disagrees with some of SIRC's assertions, in this instance it agrees with the Joint Committee that additional consideration of available scientific data concerning styrene is appropriate.

0135-0626

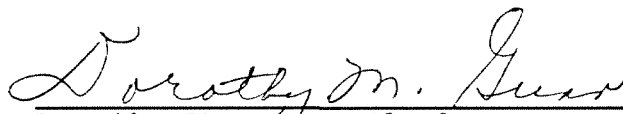
CONCLUSION

Under these circumstances, the Board believes that modification of the rules as proposed to delete the styrene listing is the most appropriate of the responses to the objection permitted by Section 7.06 of the IAPA. The Board will, by separate opinion and order, today proceed to adopt the balance of the rules as proposed on June 4, 1992. The Board has, by this order, opened Docket D in R90-1 to allow for additional consideration and a fuller explanation of the Board's rationale concerning action to list or delist styrene. The Board will issue an order establishing procedures shortly.

Finally, the Board wishes to thank the Joint Committee and its staff for their assistance to the Board in its consideration of these issues.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above resolution and order was adopted on the 3rd day of September, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0135-0628