ILLINOIS POLLUTION CONTROL BOARD
May 10, 1990

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

ADOPTED RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a September 29, 1989 proposal for amendments to 35 Ill. Adm. Code 201, 211, and 215 filed by the Illinois Environmental Protection Agency (Agency)*. The Board proposed first notice on October 5, 1989, and the proposal was officially published in the Illinois Register on October 20 and 27, 1989 at 13 Ill. Reg. 16285 and 16645. A total of five days of public hearing were held--December 7 and 8, 1989 in Springfield, Illinois, December 14 and 15, 1989 and January 19, 1990 in Chicago, Illinois. Post-hearing comments were scheduled to be filed on February 9, 1990. Based upon the record of R89-16 Subdocket (A) compiled to date, the Board proceeded to second notice on March 16, 1990, on a select portion of the first notice proposal. Thereafter the rule was submitted to the Joint Committee On Administrative Rules ("JCAR"). JCAR reviewed the rule at its May 8, 1990 meeting and issued a Certificate of No Objection. The Board notes that certain non-substantive language clarifications were made in response to JCAR staff suggestions, as well as changes to reflect language on file with the Secretary of State's Administrative Code Unit. The remainder of the R89-16(A) proposal, i.e., that which was not proposed for second notice, was transferred to the subdocket (B) proposal created by Board Order of February 8, 1990.

As is the Board's custom, this final opinion will set forth the Board's discussion of the issues that were included in the first and second notice opinions.

BACKGROUND

The Board wishes to acknowledge the contributions of former attorney assistant Daniel L. Siegfried to the drafting of these rules and the supporting opinion.

*The Board notes that Deborah Stonich, new Assistant to Board Member J. Anderson, earlier appeared on behalf of the Agency in this proceeding. Ms. Stonich has not participated in the Board's deliberations on this proceeding whatsoever.

This rulemaking proceeding has its inception, in part, in the settlement agreement submitted to resolve the lawsuit of Wisconsin v. Reilly. As part of that submittal, the State of Illinois agreed that it would submit to the United States Environmental Protection Agency (USEPA) "some or all of the reasonably available control technology (RACT) rules and RACT rule improvements specified for Illinois in Exhibit B," which exhibit includes a listing of deficiencies in the State Implementation Plan (SIP).

For its part in the settlement agreement, USEPA agreed:

> to propose as federal measures RACT rules in accordance with an EPA document dated May 25, 1988 entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification To Appendix D of November 24, 1987 Federal Register notice ("Bluebook") for Illinois to remedy the deficiencies described in Exhibit B, by December 31, 1989 and consistent with federal laws (including the Administrative Procedure Act), to promulgate rules by the following dates: (i) March 18, 1990, for rules that Illinois fails to submit to the Illinois Pollution Control Board by September 30, 1989, and for rules for which, by December 31, 1989, Illinois has failed to meet any one of the interim milestones specified in Exhibit C; or (ii) six months after any 1990 interim milestone specified in Exhibit C that Illinois has failed to meet, but in no event later than December 31, 1990. (Settlement Agreement, p. 13).

Exhibit C, referred to under USEPA's agreement, states in its entirety as follows:

EXHIBIT C

Action	Deadline
Illinois EPA proposals filed	9-30-89
Illinois Pollution Control Board decides EcIS question and publishes first notice	12-22-89
Pollution Control Board holds hearing and publishes second notice	3-16-90
JCAR completes action and PCB	

adopts final rule 5-25-90

As previously noted, the Agency filed its proposal on September 29, 1989, thereby satisfying the first "milestone" date of Exhibit C. In its proposal, the Agency certified that the proposed amendments meet the "required rule" definition contained in Section 28.2 of the Environmental Protection Act (Act), thereby invoking the Section 28.2 rulemaking process. The Board notes that this is one of the first rulemaking proceedings in which the Section 28.2 rulemaking process has been invoked. As a result, many of the issues presented herein are of first impression.

On October 5, 1989, the Board adopted the Agency's proposal for first notice. Without addressing the substantive merits of the proposal, the Board proceeded to first notice simply to begin the Administrative Procedure Act (APA) rulemaking process. The Board noted that previously unregulated sources might be affected and took its action to effectuate first notice publication in the Illinois Register to alert the potentially regulated community to the existence of this proceeding so that comments could be timely made. Also, while Illinois had in no way whatsoever committed in the settlement agreement to be bound by the rulemaking schedule set forth in Exhibit C, the Board stated that it would handle the proceeding on an expedited basis.

Further, on October 27, 1989, the Board decided that an Economic Impact Study (EcIS) need not be prepared, thereby satisfying the second "milestone" date of Exhibit C. The Board's discussion of the EcIS issue is set forth in the Order of that date and will not be restated here. As a general overview of the Board's reasoning, the Board stated its belief that there would be ample potential for consideration of the economic impact absent the preparation of the EcIS. The Board noted that four days of hearing had been scheduled and that additional days could be scheduled as needed thereafter. Further, in response to an Agency assertion that there was a very limited degree to which the Board could modify the proposal because of its "required" nature, the Board specifically noted the issue of the interplay between Sections 28.2 and 27 of the Act and requested comment thereon.

On March 16, 1990 the third "milestone" date was met when the Board proceeded to second notice with portions of the proposal. The Board did not proceed with portions of the proposal which were not supported by economic information in the Record of this proceeding or that the Board did not find were "federally required".

The Board, by adopting this Final Opinion and Order, will meet the fourth "milestone" date set forth by the USEPA in Exhibit C.

REQUIRED RULEMAKING PROCEDURES

As previously noted, the Agency certified that the proposed amendments meet the "required rule" definition of Section 28.2 of the Act, thereby invoking the expedited Section 28.2 rulemaking process. Section 28.2 provides:

a. For the purposes of this Section, "required rule" means a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a state Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, or subsection (a) of Section 22.7.

b. Whenever a required rule is needed, the Board shall adopt a rule which fully meets the applicable federal law, and which is not inconsistent with any substantive environmental standard or prohibition which is specifically and completely contained and fully set forth within any Illinois statute, except as authorized by this Act. In determining whether the rule fully meets the applicable federal law, the Board shall consider all relevant evidence in the record.

c. Within 21 days of the date that the Board accepts for hearing a proposal for a required rule, any person may request the Board to determine that an economic impact study should be prepared or that an economic impact study should not be prepared. Such request shall be made to the Board in writing and shall detail the reasons for the request. To aid the Board in determining whether an economic impact study is needed, the person filing a request that an economic study be prepared or requesting that an economic study not be prepared shall describe to the extent reasonably practicable the universe of affected sources and facilities and the economic impact of the proposed required rule.

Within 60 days of the date that the Board accepts for hearing a proposal for a required

rule, the Board shall determine whether an economic impact study should be conducted. The Board shall reach its decision based on its assessment of the potential economic impact of the rule, the potential for consideration of the economic impact absent such a study, the extent, if any, to which the Board is free under the statute authorizing the rule to modify the substance of the rule based upon the conclusions of such a study, and any other considerations the Board deems appropriate. The Board may identify specific issues to be addressed in the study.

d. If the Board determines that an economic impact study is necessary, the Department shall prepare an economic impact study in accordance with "An Act in relation to natural resources, research, data collection and environmental studies:, approved July 14, 1978, as amended. The economic impact study shall be prepared within 6 months of the date of the Board's decision that an economic impact study should be conducted. If the economic impact study is not submitted to the Board within that 6 month period, the Board may proceed to adopt a required rule without an economic impact study. If the Board notifies the Department that it will proceed to adopt a required rule without an economic impact study, the Department need not complete the economic impact study. To the extent possible consistent with subsection (b), the Board shall conduct a hearing on the economic impact of the proposed required rule.

During the course of this proceeding, three fundamental issues have arisen: (1) Is the Agency certification reviewable? (2) Is economic reasonableness and technical feasibility considered in a Section 28.2 rulemaking? and (3) What is the applicable federal law that the Board's rulemaking must fully meet?

(1) Agency Certification

On February 8, 1990, the Board adopted an Order in response to a motion filed by the "Industry Group" to dismiss or sever the proposed changes to the Generic and SOCMI Leaks rules. The Board found that the proposed amendments to the Generic Rule and the SOCMI Leaks, rules are not founded upon "federal law", granted

the motion to sever, and created a subdocket (B) in which to address those proposed amendments under Section 28 of the Act.

In its motion, the Industry Group requested the Board to dismiss or sever from the docket that portion of the docket which consists of proposed changes to the Generic Rule, (specifically 35 Ill. Adm. Code 215, Subparts AA, PP, QQ, and RR) and proposed changes to one of the rules governing the emissions from the synthetic organic chemical and polymer manufacturing industry, (specifically 35 Ill. Adm. Code 215.432, hereinafter the "SOCMI rule").

In support of its request, the Industry Group argued that the Agency incorrectly certified its proposed amendments as "federally required" and, thus, the amendments were improperly proposed pursuant to Section 28.2 of the Act. The Industry Group argued that unlike the other rules proposed in this docket, the USEPA had not disapproved the Board's existing Generic Rule or the SOCMI rule, and that the Agency's proposed rules would not become federally required until such time as USEPA takes final action on the existing rules. Further, neither of these sets of rules were mentioned in the State Implementation Plan call letter dated June 17, 1988 (SIP call letter).

The Industry Group pointed out that in the Agency's Certification [of the rules as federally required], the Agency noted that the Generic rule changes and the SOCMI rule changes were not based upon deficiencies identified by USEPA in the SIP call letter, but rather were identified subsequently. The Industry Group argued that the justification documents provided to the Board to support the required nature of those changes did not support the proposition that those are in fact federally required rules. With regard to the Generic Rule, the Industry Group pointed out that the support provided consists of a document by a "mid-level" USEPA employee to his supervisor stating that he believed that the Illinois Generic Rule was insufficient. The Industry Group argued that USEPA had not issued a SIP call letter on the Generic Rule, nor had USEPA disapproved the rule, which had been submitted to USEPA for SIP approval. With regard to the SOCMI rule, the Industry Group states that the Agency had offered as support simply the Control Technique Guidelines (CTG) for SOCMI. The Industry Group argues that "as the Board and Agency are no doubt aware, the mere fact that the Illinois rule deviates from the CTG does not mean that the Illinois rule is deficient."

The Industry Group next argued that the additional support that the Agency had provided during the course of this proceeding (i.e., (1) the "Blue Book", (2) a Federal letter, and (3) the settlement agreement) was insufficient to support the required rule status. With respect to the Blue Book, the Industry Group argued:

> The "Blue Book" is a USEPA document which was intended to provide "additional clarification of those areas" where SIP deficiencies were found. *** The document itself states that the clarification neither expands nor modifies existing federal regulatory requirements, but enhances previous information provided. With regard to SOCMI, for example, "The Blue Book" simply states, "inaccessible valves are required to be monitored at least annually. *** "The Blue Book" does not expand on this provision nor does it give any justification for the necessity of this provision. Further, the Industry Group submits that no deficiency in the Illinois SOCMI Leaks Rule has been finally determined by USEPA, thus making the Blue Book inapplicable. IERG would submit that the mere reference to this rule in "The Blue Book" does not support the proposition that this rule change is required.
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> (Industry Group Motion, p.2)

The "Federal letter," also used as justification for the required nature of these rules, is a letter dated September 28, 1989 from USEPA which constitutes USEPA's review of the regulations which the Agency subsequently proposed in this docket. The Industry Group stated that it believes that this letter was solicited by the Agency from USEPA to justify these rule changes. The Industry Group argued that while this letter states that the rule changes being proposed are federally required, this letter is neither a SIP call letter nor the disapproval of the present Illinois Generic rule or SOCMI rule.

The settlement agreement, also relied upon as justification for the required nature of these rules, is an agreement entered into between the State of Wisconsin, USEPA, and the State of Illinois, which settled the law suit brought by the State of Wisconsin against USEPA claiming that USEPA had not acted in accordance with the Clean Air Act in regard to the Illinois SIP. In the settlement agreement, fifteen outstanding Illinois volatile organic compound deficiencies were listed, including deficiencies in the SOCMI rule and the Generic rule. The Industry Group believes that the mere fact that the deficiencies were noted in a voluntary settlement does not make these rules required rules for purposes of Section 28.2 of the Act. The Industry Group argues that:

> If any time that USEPA entered into a settlement agreement or a voluntary agreement of any sort which contemplated rule changes,

> when those rules were proposed, IEPA would take the position that those rules are required even though they were the product of a voluntary negotiated settlement and not the product of either a disapproval, a SIP call letter, or any definitive, final USEPA action of that sort. The Industry Group submits that in that way, any and all rules could become required rules simply by agreement.
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> (Industry Group Motion, p. 3)

Finally, the Industry Group noted that in a Federal Register dated December 27, 1989, USEPA, for the first time, proposed to take Federal action regarding the Illinois Generic rule and the SOCMI rule by proposing to disapprove the rules. The Industry Group argued that the mere proposal by USEPA to disapprove these rules was insufficient to elevate these rules to required rule status for purposes of this rulemaking. The Industry Group argued further that (1) a proposal to disapprove is not final action, (2) such action is not appealable, and (3) it is an open question whether USEPA will ultimately finally disapprove the rules.

The Industry Group also commented on other substantive issues pending in this docket, i.e., whether economic reasonableness and technical feasibility must be considered in a Section 28.2 rulemaking. The Board addresses that issue below.

In its response to the Industry Group motion, the Agency stated as follows:

> (1) The IEPA does not object to creating a separate docket for the Generic Rule and the SOCMI Leaks Rule. However, this separate docketed proceeding should be in accordance with Section 28.2 of the Act. The IEPA properly certified these regulations as federally required and the Board referenced the certification in its First Notice Order, dated October 5, 1989. Therefore, even if docketed separately, the proceeding should continue to be considered a federally required rulemaking under Section 28.2 of the Act.
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> (2) The IEPA strongly objects to the request to dismiss that portion of the R89-16 docket which consists of changes to the Generic Rule and the SOCMI Leaks Rule. The IEPA has repeatedly stated that these proposed regulations are federally required rules pursuant to Section 28.2 of the Act.

This constitutes the entire substance of the Agency response to the Industry Group's motion.

The Board noted that this is not the first time it has been called upon to determine whether proposed rules which have been certified as "required rules" by the Agency are in fact required rules for purposes of proceeding pursuant to Section 28.2 of the Act. The Board addressed similar issues in R88-21, (Water Toxics Control), First Notice, August 31, 1989, wherein after a review of the federal law identified by the Agency, the Board found that the proposed rules were federally required for purposes of Section 28.2 of the Act. When the Agency filed its proposal on September 29, 1989, the Agency certified that the proposed amendments met the "required rule" definition, noted above. In the first notice, published October 27, 1989, at 13 Ill. Reg. 16645, the Board referenced the Agency's certification. Publication of the first notice was effectuated within one month of the date the Agency filed its proposal. Thus, the procedural provisions of Section 28.2(e) have been satisfied.

Now, the regulated community has challenged the Agency's certification of a portion of these rules as "required rules." The Board noted that Section 28.2 is silent on any methods or procedures by which an Agency's certification is to be challenged. It is apparently the Agency's position that such silence is to be interpreted as meaning that there is no challenge to an Agency certification. In other words, the Agency apparently believed that once it certifies a proposal as a "required rule", the Section 28.2 rulemaking procedures automatically apply and there is no review of this certification.

However, the potentially regulated community strenuously opposed that position. The Board stated that it believes that the reason for such strong opposition, at least in this proceeding, is closely intertwined with the Agency's articulated position as to the scope of a Section 28.2 rulemaking. The Agency's interpretation of Section 28.2 seems to be that once it certifies a rule as a "required rule," the Board must adopt a rule without any consideration of economic reasonableness or technical feasibility. Moreover, the Agency has stressed that whatever the Board adopts must be in "approvable form." The Agency pointed to USEPA's filing of September 29, 1989, in which David Kee, Director of USEPA's Air and Radiation Division, stated that if the Agency's proposed regulations were adopted by the Board, USEPA's intent was to approve the regulations as a SIP revision in lieu of federal promulgation. Based upon this statement, the Agency stated that the Board must adopt the rules as written, or threaten the approvability of the SIP revision.

As a preliminary matter on the issue of the Agency certification, the Board noted that it had on February 8, 1990

proceeded to Second Notice in the Board Procedural Rules rulemaking R88-5. In that Second Notice, the Board addressed the issue of the reviewability of an Agency certification in proposed amendments to 35 Ill. Adm. Code 102.Subpart F. Although those proposed rules are not yet effective, the Board's action of February 8, 1990, was intended to be consistent with that discussion.

The Board found that, although Section 28.2 is silent on the issue, an Agency certification that it believes a proposed rule is a "required rule" is an Agency final determination on the issue and, thus, pursuant to Section 5(d) of the Act, it is reviewable by the Board. The Board believes that this is the only possible interpretation of Section 28.2 that allows it to be read consistently with the remainder of the Act. Sections 5, 27, and 28 of the Act make it quite clear that the Board is the rulemaking body in Illinois for substantive regulations that implement the various provisions of the Environmental Protection Act. To allow the Agency unfettered discretion in certifying a proposed rule as a "required rule" would give to the Agency a profound ability, at the outset, to influence or pre-define the scope of what is relevant evidence in a rulemaking proceeding. The Board does not believe that this was the intent of the General Assembly in adopting Section 28.2. Further, the Board notes generally that under the regulatory and enforcement scheme created by the Act, the Board is the agency authorized to review the decisions of the Agency.

Of what legal significance, then, is an Agency certification? The Agency certification is the official statement that it believes its proposed rule is a required rule and the formal identification of the federal law to which the Agency believes the proposed rule will respond. As such, the Board finds that the certification is simply the formal prerequisite required to invoke the Section 28.2 expedited rulemaking procedure. Further, because the certification requires (1) only the Agency's "belief" and (2) the specific identification of the federal law requiring the proposed rule, the Board finds that the Agency certification is not entitled to any deference or presumption of correctness. The Board, as the State's authorized rulemaking agency, can independently verify, based upon the record, whether or not the federal law relied upon by the Agency actually requires the proposed rule and, thus, utilization of the Section 28.2 process.

Having found the authority to review certifications, the Board further found that the proposed amendments to the Generic rule and the SOCMI rule are not founded upon "federal law" as that term is used in Section 28.2 of the Act. The Board was persuaded by the thorough analysis submitted in the Industry Group motion, which is discussed above. The Board was also persuaded by the lack of analysis in the Agency's response. The

Board can find nothing in the record to directly support the characterization of the Generic rule and SOCMI rule proposed amendments as "required rules." As a result, the Board found that those proposed sections must be removed from the existing docket.

Rather than dismissing those portions of the proposal outright, the Board determined that the wisest course was to open up a subdocket (B) in which to consider the amendments proposed to the Generic rule and the SOCMI rule. That which remained of the existing proposal and the record attendant thereto shall constitute R89-16, subdocket (A).

The Board recognized that at first blush the order of February 8, 1990 may seem to imperil certain portions of the Wisconsin v. Reilly settlement agreement. It does not. The relevant portion of the settlement agreement states "that it [Illinois] will submit to EPA **some or all** of the reasonable available control technology ("RACT") rules and RACT rule improvements specified for Illinois in Exhibit B." (Emphasis added). (Settlement Agreement, p. 12). First, it was entirely up to the Agency's discretion which, if any, of the rules would be proposed to the Board to satisfy this provision of the settlement agreement. As this was entirely a discretionary decision by the Agency and as the Agency has **not** proposed all of the rules specified in Exhibit B, removing the Generic rule and SOCMI rule portions will simply place them in the same position as the other rules the USEPA is promulgating, and thus will not offend the settlement agreement. Second, the rules which Illinois submits to USEPA must be properly adopted under the Environmental Protection Act and the Administrative Procedure Act. The Board does not believe that the amendments proposed to the Generic rule and the SOCMI rule will be properly adopted under Section 28.2, and the Board wants all concerned to be aware of this determination as soon as possible. Finally, today's Board action in no way affects the federal rulemaking currently pending--USEPA itself proposed on December 27, 1989, all of the RACT rules and RACT rule improvements, including the Generic and SOCMI rules, specified for Illinois in Exhibit B. The federal promulgation will continue, at its own pace, without regard to this action.

On March 15, 1990 the Agency filed a motion to reconsider the Board's February 8, 1990 Order. On April 4, 1990, the Board issued an Order granting the Agency's motion to reconsider but declining to grant the Agency relief. In support of its motion, the Agency argued that the Board erred in deciding (1) that it possesses the authority to review an Agency certification of a proposed rule as "federally required" and (2) that the proposed changes to the Generic rule and the SOCMI rule are not "required" within the meaning of Section 28.2 of the Act.

(1) Agency Certification

The Agency argued that the Board does not have the authority to review an Agency certification of a proposed rule as a required rule pursuant to Section 28.2 of the Act. First, the Agency stated that there is no specific grant of authority to the Board to reject and dismiss the Agency certification in a Section 28.2 proceeding and that the Board is an administrative body subject to the statutory rule that without a specific grant of authority, such authority does not exist. Village of Lombard v. Pollution Control Board, 66 Ill. 2d 503, 363 N.E.2d 814, 6 Ill. Dec. 867 (1977); Illinois Power Company v. Illinois Pollution Control Board, 137 Ill. App. 3d 449, 448 N.E.2d 898, 92 Ill. Dec. 167 (4th Dist. 1985); Chemetco, Inc. v. Illinois Pollution Control Board, 140 Ill. App. 3d 283, 488 N.E.2d 639, 94 Ill. Dec. 640 (5th Dist. 1986).

The Board does not disagree with these cited cases. However, the Board notes that the courts have also held that where there is an express grant of authority, there is likewise the clear and express grant of power to do all that is reasonably necessary to execute the power or perform the duty specifically conferred. Chemetco, 488 N.E.2d 639, at 643. As discussed in the Order of February 8, 1990, under Section 5 of the Act, the Board is the environmental rulemaking Agency for the State of Illinois. In other words, the General Assembly has made an express grant of rulemaking authority to the Board, Along with that express grant of rulemaking authority goes the power to do all that is reasonably necessary to perform that duty.

The Board believes that, in Section 28.2 rulemaking proceedings, reviewing the correctness of the Agency's certification may in certain instances be a reasonably necessary step in performing the duty of adopting "a rule which fully meets the applicable federal law,...". Where, as here, (1) the federal law to which the proposed rule is alleged to respond is of such a general nature and/or (2) the underlying subject matter has been the source of controversy, the Board must discern exactly what is required before it can adopt a rule which fully meets the applicable federal law. In other words, discerning what is "required" goes hand in hand with adopting a rule which fully meets the applicable federal law. Thus, to perform the duty of adopting a rule which fully meets the applicable federal law, the Board must have the power to determine what the requirements of the applicable federal law are; and if that differs from what the Agency certifies as being required, the Board must have the power to review the Agency certification for correctness.

The Agency next argued that the Board's reliance upon Section 5(d) of the Act is misplaced. Section 5(d) states:

d. The Board shall have authority to conduct

> hearings upon complaints charging violations of this Act or of regulations thereunder, upon petitions for variances; upon petitions for review of the Agency's denial of a permit in accordance with Title X of this Act; upon petition to remove a seal under Section 34 of this Act; upon other petitions for review of final determination which are made pursuant to the Act or Board rule and which involve a subject which the Board is authorized to regulate; and such other hearings as may be provided by rule.

The Agency argued that the only basic grant of authority to the Board in Section 5(d) is the authority to "conduct hearings". The Agency stated that there is no decision-making or review authority granted to the Board in Section 5(d), other than the authority to conduct a hearing. Further, the Agency focuses on the language "and which involve a subject which the Board is authorized to regulate". The Agency contended that the Agency certification was not a subject which the Board is authorized to regulate.

In its response, IERG noted that the Agency takes the position that the Board does not have the authority to review or dismiss a certification and that, as a result, any rule the Agency so designates as a required rule automatically becomes a "required rule" within the meaning of Section 28.2. IERG argued that should this contention prevail, taken to its logical extension, the Agency could certify any proposed rule as a required rule and the Board would have to so treat the rule, regardless of whether the Agency's position is with or without merit. IERG argued that this position is without legitimate basis. Further, IERG argued that Section 5(d) grants to the Board the authority to review the Agency certification, and further the Board has, under Section 5(b) of the Act, general powers to make and implement rules. It is this broad grant of rulemaking authority that IERG relied upon to support its view that the Board possesses the authority to review Agency certifications.

The Board was not persuaded by the Agency on this point. First, with respect to the Section 5(d) grant of authority to the Board to "conduct hearing", the Board believes that the Agency construes this language much too narrowly. Implicit in the grant subject matter of the hearing. The Board construes this subsection as a general grant of authority to conduct hearings and to act in ways that reasonably flow from the holding of such a hearing. In this proceeding, the relevant language is:

> The Board shall have authority to conduct hearings ...upon petitions for review of final

> determinations which are made pursuant to the Act or Board rule and which involve a subject which the Board is authorized to regulate;...

The Board notes that the Industry motion filed January 24, 1990, constitutes a petition for review of a final determination of the Agency made pursuant to Section 29.2 of the Act. With respect to the second part of this provision, i.e., "and which involves a subject which the Board is authorized to regulate", the Board believes that, there too, the Agency construes this language too narrowly. Whereas the Agency would construe the "subject" as being the Agency certification separate and distinct from anything else, the Board construes the "subject" as being the subject matter of the proposed amendments, i.e., requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), etc. Clearly the emission of air pollution is a subject which the Board is authorized to regulate. Thus, the Board's reliance upon Section 5 of the Act is proper to base the authority to review an Agency certification.

The Agency next stated that is is not asserting that, under Section 28.2, the Agency certification is beyond judicial review. The Agency contended that after the Board's final decision, any participant with a legitimate interest in the outcome of the proceeding may appeal. The Agency stated that such an appeal could raise the issue of whether the proceeding is a required rule proceeding pursuant to Section 28.2 of the Act.

In its response, IERG noted that in an appeal from the adoption of an administrative regulation, the one who attacks the regulation bears the burden of establishing its invalidity. IERG argued that a reviewing court may set aside an administrative regulation only if it is clearly arbitrary, capricious, or unreasonable. Midwest Petroleum Marketers Association v. City of Chicago, 82 Ill. App. 3d 494, 402 N.E.2d 709 (Ill. App. 1980). Further, IERG argued that issues which are not objected to in the original administrative proceedings are waived and cannot be raised on appeal. Waste Management v. Pollution Control Board, 530 N.E.2d 682, 695, 125 Ill. Dec. 524, 537 (Ill. App. 2d 1988). Thus, IERG argued that if the Board is not permitted to decide the issue of whether a rule is a required rule pursuant to Section 28.2 of the Act at the administrative level, the Appellate Court cannot and will not decide that issue on appeal.

On this point, the Board agrees with IERG. Notwithstanding the Agency's assertions, the courts have been quite clear on the issue. Issues that have not been presented or passed upon in an administrative hearing will not be considered on review. Village of Cary v. Pollution Control Board, 38 Ill. Dec. 68, 403 N.E.2d 83, 82 Ill. App. 3d 793 (1980). In light of these holdings, the Board is persuaded that it must address appeals to the Agency

certification during the course of the rulemaking proceeding. In this way the appellate court will have a complete record to review on appeal. Moreover, the Board believes that were it to subscribe to the Agency's theory, it would be required to proceed through a lengthy rulemaking proceeding on the possibly shaky ground of an erroneous Agency certification. It would be a waste of scarce State resources to have the Board, and all participants, expend the necessary time, energy, and resources to complete a rulemaking only to have the appellate court find on appeal that the Agency certification was erroneous, thereby voiding the entire rulemaking proceeding and any regulations resulting therefrom.

2. Generic and SOCMI rules status

The Agency argued that the proposed changes to the Generic and SOCMI rules are required rules as defined in Section 28.2(s) of the Act. The Agency pointed to the language in the Board's February 8, 1990 Order, wherein it states:

> Having found the authority to review certifications, the Board further finds that the proposed amendments to the Generic rule and the SOCMI rule are not founded upon "federal law" as that term is used in Section 28.2 of the Act. The Board is persuaded by the thorough analysis submitted in the Industry Group motion, which is discussed above. The Board is also persuaded by the lack of analysis in the Agency's response. The Board can find nothing in the record to directly support the characterization of the Generic rule and SOCMI rule proposed amendments as "required rules." As a result, the Board finds that these proposed sections must be removed from the existing docket.

With respect to the lack of analysis in the Agency's response, the Agency stated that its comments on the issue of the proper interpretation of Section 28.2 were not due until February 9, 1990. The Agency stated that it requested and received an extension of time to February 9, 1990, to respond to the motion to strike filed by Stepan. The Agency stated further that it had every expectation that this issue would be decided on the basis of all available information and arguments. Therefore, the Agency stated that it believed that having acted on February 8, 1990, the Board acted on an issue of great importance before the Board's own deadline had passed.

In its response, IERG noted that the Agency never requested an extension of time to respond to the Industry Group's motion to dismiss. IERG stated that the Board waited for the allowable

time for responses to pass before acting on the motion. IERG stated that it believes the the Board acted expeditiously after that time. IERG further stated:

> IEPA appears to be claiming that the Board acted too expeditiously in ruling on the Motion, even though the Board had no way of knowing that the IEPA ever intended to respond to that Motion. Indeed, the IEPA does not State that it ever intended to respond to the Motion of the Business Group [Industry Group] which was decided by the Board.
>
> (IERG Response, pp. 3-4)

To put this matter into perspective, the Board noted that the Agency did, on January 31, 1990, file a response to the Industry Group's motion--in fact, the complete substantive response by the Agency was fully reprinted in the Board's Order of February 8, 1990. The Board understood this filing to be the Agency's response to the Industry Group's motion. Although the Agency stated at the conclusion of that response that it "reserves the right to brief or comment on the issues contained in the Industry Group's Motion prior to the close of the comment period", the Board notes that its procedural rules allow participants 7 days to file a response to a motion. 35 Ill. Adm. Code 101.241(b). No participant can extend a properly adopted procedural deadline simply by "reserving the right" to file a subsequent document. Further, the Agency's reliance on its extension of time to respond to Stepan's motion is not persuasive--the extension was simply for that limited purpose, a response to Stepan's motion. The Board noted that Stepan's motion and the Industry Group's motion were two separate and distinct motions. Had the Agency requested additional time to respond to the Industry Group's motion, as it had with respect to the Stepan motion, and had the Board granted the motion, then the Agency's post hearing comments could have and would have been considered before the decision on the motion. However, as the Agency filed a response that was complete in and of itself within 7 days of the filing of the motion, the motion was ripe for decision. The Agency cannot now argue that the motion was not ready for decision; the Agency's own action made the motion ripe.

The Agency next argued that the Generic and SOCMI rule amendments fall within the definition of "required rule" in Section 28.2(a) of the Act. The Agency notes that the Board relied upon the term "federal law" in finding that the Generic and SOCMI rule amendments were not required, and apparently argued that, in so doing, the Board erroneously interpreted Section 28.2(b) when it should have interpreted Section 28.2(a). The Agency stated:

> The term "federal law", which the Board relies on in making this decision, has nothing to do with determining whether a rule is a required rule; in fact, the term "federal law" appears in Section 28.2(b) and specifically refers to the Board's obligation to adopt a rule which "fully meets the applicable federal law".

On this point, the Agency appears to be splitting hairs. Either a rulemaking is "required" under federal law or it is not. The terms "required rule" and "federal law" are two sides of the same coin. In other words, it is the result of a federal law which makes a proposed rule "required". Further, the Agency's statements ignore Section 28.2(e), wherein it states in pertinent part:

> When the Agency proposed a rule which it believes to be a required rule, the Agency shall so certify it its proposal, identifying the federal law to which the proposed rule will respond. (Emphasis added.)

This Section, too, references "federal law," and in the specific context of the Agency certification. Thus, the Board disagrees with the Agency when it asserts that "federal law" has nothing to do with determining whether a rule is a required rule--it has everything to do with it.

Finally, the Agency argued that its certification "clearly establishes" the Generic and SOCMI rules as required rules. Further, the Agency argued that the federal requirement is not contained in the SIP call letters, the "blue book", federal letters or settlement agreements, but rather in the Clean Air Act. The Agency then proceeded to argue against the analysis offered by the Industry Group in its motion and relied upon by the Board in its February 8, 1990 Order.

In its response, IERG noted that the "IEPA appears to be filing what would have been its response to the Industry Group's Motion." IERG submitted that there is nothing contained in the Agency's motion that provides any support for its position that the Generic and SOCMI rules are required rules. IERG argued that the Agency's motion is basically a lengthy quotation from the Agency certification, which was reviewed by the Board and found to be inadequate support for the position that the rules are required. Finally, IERG argued that the Clean Air Act does not require any particular rule content to be adopted by the states, but rather leaves it to each State to determine the proper mix of controls to achieve and attain the National Ambient Air Quality Standards ("NAAQA"). As a result, IERG argued that none of the Clean Air Act rules are required rules pursuant to Section 28.2 simply because the rule will be a part of the State

Implementation Plan. IERG argued that for a rule under the Clean Air Act to become a required rule, for purposes of Section 28.2 of the Act, the rule must be adopted by the Board, submitted to USEPA, and disapproved as a SIP revision for a particular deficiency.

The Board agreed that the Agency's motion contained arguments which should have been timely raised in its response to the Industry Group's motion. The Board has already determined that under the procedural rules the Agency's two-paragraph response constituted its complete response to the motion. To the extent that the Agency now raises new arguments, i.e., arguments not raised in its response to the Industry Group motion, the Board found those arguments waived. Arguments cannot be raised on reconsideration that were not offered during consideration of the underlying Order, without specific justification for the failure to raise those arguments earlier. In this case, the Agency failed to provide such justification.

However, even if the Agency's arguments were not found to be waived, the Board would still decline to reverse its February 8, 1990 decision. As the Board discussed at length in its March 16, 1990 Second Notice Order, Reasonably Available Control Technology ("RACT") rulemakings are extraordinary rulemakings in that a State is to decide for itself what constitutes reasonably available control technology based upon the circumstances found within its borders. Then the state's decision, i.e., its regulations, are submitted to USEPA for approval as part of the State Implementation Plan. The Board agrees, to a certain extent, with IERG that the Section 28.2 required rule proceeding does not lend itself well to the RACT rulemaking requirements of the Clean Air Act--simply because RACT rulemakings are inherently State decisions. Thus, in the first instance, there is not clear federal requirement except that the State adopt rules which it believes to be RACT. In this case, the State of Illinois has already adopted Generic and SOCMI rules that it believes to be RACT for Illinois. Those rules were adopted in R86-18 and R86-39, respectively, in late 1987 and early 1988. Further, those rules were submitted to USEPA as revisions to the SIP. However, when the Agency proposed this rulemaking on September 29, 1989, USEPA still had not acted upon those SIP submittals. In other words, although USEPA had had the rules for approximately a year and a half, it had not proposed to approve or disapprove the rules, nor had it formally adopted an approval or disapproval of those rules. However, on December 27, 1989, at the same time that USEPA published its notice of proposed regulations constituting a federal implementation plan for Illinois, 54 Fed. Reg. 53080, USEPA also published a notice of proposed disapproval comment period. To date, USEPA has still not proceeded to final adoption of those disapprovals. Thus, Illinois' Generic and SOCMI rules have not been officially disapproved as yet. Given this particular State of affairs, the Board does not believe that

the Generic and SOCMI rules can be said to be required until USEPA officially adopts a disapproval of them as SIP revisions.

In addition to the aforementioned motions the Stepan Comapny on January 10, 1990, filed a motion to strike and motion for application of Section 28 rulemaking, arguing essentially that the Agency's proposal fails to identify the "law" to which the proposed amendments will respond. On January 23, 1990, the Agency filed a motion for extension of time to respond to the motion. The Board granted the Agency's motion on January 25, 1990.

In its post-hearing comments, however, Stepan indicated that the Agency would, in its comments, provide written confirmation of its "interpretation of the statutory provision [Section 10] and of the inapplicability of the Generic Rule to Stepan by virtue thereof." Stepan further stated that in light of that understanding, the issue as to the status of the Agency proposal as a required rule under federal law as raised in its motion is moot.

On February 22, 1990, the Board adopted an order noting this language and noting that the Agency had in fact filed comments confirming Stepan's assertions. The Board construed Stepan's statement that the issue is moot as a request to withdraw its motion and granted the motion. As a result of the substantive actions taken in the Board's Order of March 16, 1990, which are discussed below, the Board does not believe it necessary to look further into the "required" nature of the remainder of the proposed amendments, beyond that which is discussed under number 3, below.

(2) Economic Reasonableness and Technical Feasibility

By far the most controversial issue raised in this proceeding is whether or not economic reasonableness and technical feasibility are to be considered in a Section 28.2 rulemaking. This issue was touched upon in the Board's Order of February 8, 1990; however, as post-hearing comments were scheduled to be filed on February 9, 1990, the Board opted to await all comments before addressing the issue. The Board determined that economic reasonableness and technical feasibility are necessary considerations in a Section 28.2 rulemaking.

As discussed above, the Board decided on October 27, 1989 that an EcIS would not be conducted. Such decision was made pursuant to the second paragraph of Section 28.2(c). The reasons for such decision are addressed in the Order dated October 27, 1989. As an aside, the Board notes that another consideration also presented itself. The Exhibit C schedule of "milestone" dates has been previously noted. The Board notes that that schedule does not contemplate the preparation of an EcIS. In

fact, the only way for the Board to meet the "milestone" dates is for an EcIS to not be prepared. In an attempt to cooperate with and demonstrate good faith to the other parties of the Wisconsin lawsuit and in recognition of the fact that economic and technical information have traditionally been introduced during the hearing process, and fully expecting that such would be submitted during the hearings in this proceeding, the Board chose to attempt to meet the Exhibit C schedule over requiring the EcIS. Had the Board known what would transpire, perhaps that decision would be different.

On the first day of hearing, December 7, 1989, an Agency representative stated:

> The Agency is not offering testimony on the technical feasibility of compliance, the economical reasonableness of these proposed regulations or the affected facilities. This regulatory package contains corrections to deficiencies in the RACT rules identified by USEPA. According to the Settlement Agreement, if the Board fails to timely adopt the corrections in an approvable form, USEPA will promulgate federal corrections. In either case, emission sources will be required to come into compliance with rules implementing these corrections. In addition, this information is not necessary for the Board to adopt a rule that fully meets the applicable federal law. (Emphasis added.) (R. 14-15.)

At no time before that date was the Board ever given an indication by the Agency that it subscribed to this position. In fact, the Board notes that in another "required" rulemaking, R88-21, Water Toxics, adopted January 25, 1990, an EcIS was prepared and economic reasonableness was considered. That notwithstanding, however, the Agency chose to let its proposal stand or fall with this position on the scope of a Section 28.2 rulemaking proceeding. The remainder of the December 7 and 8 hearings was devoted to Agency testimony on the federal justification of the proposed amendments and Agency statements that it was not prepared to respond to questions involving economic or technical justification.

On December 13, 1989, the Hearing Officer issued an Order directing the Agency, and requesting USEPA, to be prepared to respond to certain questions at the December 14, 1989 hearing. The specific questions are as follows:

> 1. Describe, to the extent reasonably practicable, the types of Illinois sources and facilities that are within "the universe of affected sources and facilities" subject to the proposed required rules.

2. Describe, to the extent reasonably practicable, by type, approximately how many such sources and facilities would be affected by the proposed required rules.

3. Describe, to the extent reasonably practicable, the anticipated economic effects of the proposed required rules on sources and facilities. Will the effect and timing of these rules result in more stringent standards in Illinois than elsewhere?

4. Has either the IEPA or USEPA determined, formally or informally, whether the proposed required rules are technically feasible? Economically reasonable?

5. If either answer to #4 is "yes", what was the nature of the determination, and when and how was it made?

6. Is it the position of either the IEPA or the USEPA that the substance of the proposed required rules cannot be altered or modified in any significant substantive way (excluding typographical errors and other non-substantive matters) if USEPA is to grant its approval? If so, what is the authority for this position? Has this authority been asserted in writing?

7. If the answer to #6 is "no", what procedure(s) and what USEPA official(s) determine whether a modification is approvable?

At hearing on December 14, 1989, the Agency offered certain responses to these questions on a deficiency by deficiency basis. The substance of such responses is addressed below under the specific deficiencies. These responses constitute the extent of the information submitted by the Agency regarding economic reasonableness and technical feasibility.

At hearing on December 14, 1989, the Board received testimony from Mr. Sidney Marder, Executive Director of the Illinois Environmental Regulatory Group (IERG), on the issue of considering economic reasonableness and technical feasibility in a Section 28.2 proceeding. Mr. Marder noted that he participated in the drafting of Section 28.2, along with many others. Mr. Marder stated his view that:

> There is no way that the business community would have agreed to a change in the Environmental Protection Act that would have incorporated a provision that would have allowed the Agency to categorically say that a federally mandated rule does not require the inclusion or the consideration of economic impact or technical feasibility. (R. 261.)

Mr. Marder further noted his view that Industry representatives traded off the need for an EcIS as a formal document in certain cases, but specifically retained the right to economic and technical data pursuant to Section 27 of the Act. (R. 262.)

At hearing on December 15, 1989, the Board received testimony from Mr. James Harrington, appearing on behalf of the Illinois Steel Group and the Illinois Manufacturers Association. Mr. Harrington testified on the history of Section 28.2 of the Act. After providing background information, Mr. Harrington stated

> During this time, it was never suggested by the Governor's Office, Ms. Witter, or Mr. Haschemeyer for the Agency, or from anyone else that the requirement for economic reasonableness, technical feasibility considerations would be deleted from rulemaking pursuant to Section 28.2. Indeed, in phone conversations, I believe industry was assured that these requirements would continue in effect. And that, therefore, industry would be protected from the adoption of rules without the consideration of economic reasonableness, or technical feasibility. (R. 496-497.)

On January 18, 1990, the Illinois Steel Group filed a Memorandum of Law Regarding Adoption of RACT Rules, which provided argument in support of Mr. Harrington's position.

In post-hearing comments, most if not all of the industry participants stated that a Section 28.2 rulemaking proceeding must include a consideration of economic reasonableness and technical feasibility.

In post-hearing comments, the Agency submitted a brief regarding its interpretation of Section 28.2 of the Act and an affidavit of Mr. Delbert Haschemeyer. The Agency offers the affidavit of Mr. Haschemeyer, Deputy Director of the Agency, in response to the positions stated by Mr. Marder and Mr. Harrington, noted above. In his affidavit, Mr. Haschemeyer states that the basic agreement between the participants which formed the foundation for Section 28.2(c) and (d) included:

> That the economic impact study (EcIS) process with the involvement of Economic Technical Advisory Committee (ETAC) was cumbersome, time consuming and frequently non-productive. That a new process was needed which offered greater flexibility for the development and consideration of economic information to the extent such information was relevant and necessary to the Board's consideration.

> That the role of economic information in a required rule and the Board's ability to consider economic information would vary depending on the nature of the Federal requirements and the nature of the proposed rule....
>
> The question presented is whether economic information is relevant to the Board's consideration of the substance of the rule. That is, would consideration of economic information change the substance of the rule. If not, then the Board could proceed without such consideration. (Affidavit pp. 2-3)

Finally, Mr. Haschemeyer states that the Board's need to consider economic information in required rulemakings is contained entirely and exclusively in Section 28.2 and that depending on the nature of the Federal requirement and the nature of the proposed rule, that need can vary from none at all to the need for a full blown EcIS and consideration thereof.

The Agency's brief argues basically as follows. The first issue is whether the rules proposed are indeed needed to meet the requirements of federal law. It is the Agency's position that the rules proposed herein are needed in order for Illinois to meet the requirements of Sections 110(a) and 172(b) of the Clean Air Act (CAA). Thus, it argues that the applicability requirements of Section 28.2 have been met. The second issue is whether the rules proposed fully meet the applicable federal law under Section 28.2 and whether they, or some other rules which fully meet the applicable federal law, should be adopted by the Board. The Agency notes that if a rule is needed to meet the requirements of the federal CAA, the Board is mandated by Section 28.2 to adopt a rule which fully meets the applicable federal law. The Agency continues:

> Several arguments have been offered asserting that the Board must consider the economic reasonableness, economic impact and technical feasibility of proposed regulations in a proceeding pursuant to Section 28.2 of the Act. Under the plain language of the section, this depends upon whether there is more that one alternative which "fully meets the applicable federal law", since the Board must adopt a rule which does so. If there is only one alternative that the Board can determine will satisfy the standard for a required rule, the Board must adopt that proposal. Obviously consideration of other factors would be unnecessary and irrelevant in such a situation.
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> * * *
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> A review of the record establishes that the Agency has provided a substantial body of relevant evidence to the

> Board to support its assertion that adoption of its proposed rules will fully meet the applicable federal law, including the CAA. Such evidence includes written documentation and sworn testimony by USEPA representatives. The USEPA testimony was that the Agency proposals, if adopted by the Board, will meet the requirements of applicable federal law.... Nothing comparable has been provided for any alternatives to this Agency's proposal. In the absence of specific competing proposals, with supporting evidence in the record showing alternatives which meet the applicable federal law, the Board has no choice but to comply with its statutory mandate and adopt the Agency's proposals. (Agency Brief pp. 4-5.)

Finally, the Agency believes that resort to the legislative history behind the enactment of Section 28.2 is unnecessary because the statute is clear and unambiguous on its face.

With this final comment the Board concurs. The Board does not believe it necessary to look beyond the language of Section 28.2 of the Act to determine whether economic reasonableness and technical feasibility are to be considered in a Section 28.2 rulemaking.

Section 28.2 specifically contemplates the potential for preparation of an EcIS. The fundamental distinction between the rulemaking procedures of Section 28.2 and the regular rulemaking procedures is that if an EcIS is requested in a Section 28.2 rulemaking the Board can proceed after 6 months of the date the EcIS was requested whether or not the EcIS is submitted. Nowhere in Section 28.2 does it say that economic reasonableness and technical feasibility, which are required by Section 27, are not to be considered in a required rule proceeding. It is a basic rule of statutory construction that, if reasonably possible to do so without violence to the spirit and language of the statute, the provision being construed should be interpreted so as to give the statute efficient operation and effect as a whole. See, e.g. Pliakos v. Illinois Liquor Control Commission, 143 N.E.2d 47, 11 Ill. 2d 456 (1957). In order to give all provisions of Title VII of the Act there intended effect, the Board believes that it is required to consider economic reasonableness and technical feasibility in any rulemaking unless the statutory authority for that rulemaking explicitly exempts those issues from consideration, such as in Section 17.5 of the Act, or unless the statutory language clearly indicates that those issues need not be considered, such as in Section 7.2 of the Act.

Section 27* has been construed by the courts as a

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*Section 27(a) of the Act states in relevant part:

> broad requirement that the Board "take into account" certain factors in promulgating its pollution control regulations reflects a legislative recognition of the complexities of pollution control technology and of the differing levels of sophistication of control methods associated with various types of pollution. The requirement of Section 27 is a flexible one and of necessity requires that a great deal of discretion be exercised by the Board. Shell Oil Co. v. IPCB, 37 Ill. App. 3d 264 346 N.E.2d 212 221 (1976).

In the context of cases affirming the Board's adoption of a prior set of RACT rules adopted by the Board, the appellate courts have stated that the Section does not mandate any particular standards with which the Board must comply, and does not establish that the Board must support its regulatory conclusions with any given, specified quantum of evidence. Illinois State Chamber of Commerce v. IPCB, 177 Ill. App. 3d 923, 532 N.E.2d 987 (1988); Stepan Co. v. IPCB, N.E.2d , Ill. App.3d (no. 3-88-004, Third Dist., February 8, 1990), (slip op.as 8), Section 27 does, however, require the Board to "take into account" economic reasonableness when making its decisions. There is no conflict between the mandates of Section 27 and 28.2, although Section 28.2 may limit Section 27's broadest scope.

Thus, economic reasonableness and technical feasibility will be taken into account in a Section 28.2 proceeding, as any other consideration required by Section 27 of the Act. However, the weight that will be given to those considerations can depend upon certain variables, which include but are not limited to, the nature of the subject matter, the specifity of the federal requirements, and any federal deadline.

This proceeding, entitled "Reasonably Available Control

> In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.

Technology Deficiencies", is a somewhat unusual proceeding. It is a proceeding in which economic reasonableness considerations are inherent in the subject matter. Further, it is a proceeding involving the same issues as the Board has considered in previous rulemakings. During the past several years, the Board has conducted many rulemakings resulting in the adoption of Illinois' existing RACT rules. The Board determined, based on records that included Economic Impact Studies, that the existing regulations constitute RACT in Illinois. Thus, the Board is being asked to reevaluate those prior determinations, which themselves involved considerations of economic reasonableness and technical feasibility. The Board is not persuaded to now completely ignore those considerations in correcting the deficiencies in those rules.

The Agency's arguments concerning economic reasonableness and technical feasibility will, therefore, be directed to the "weight" that those considerations should receive. To support its view that economic information is not necessary for the Board to adopt the proposed rules, the Agency relies upon the language in Section 28.2(c), which states:

> ...the extent, if any, to which the Board is free under the statute authorizing the rule to modify the substance of the rule based upon the conclusions of such a study,...

The Board notes that this language is relevant to the Board's decision as to whether an EcIS shall be prepared, and only to that issue. This language is not relevant to, and does not affect, the Board's underlying authority to consider economic reasonableness and technical feasibility in promulgating regulations under Section 28.2. Further, the Board notes that identical language is also found in Section 27(a), paragraph 1 of the Act, and has not been interpreted to limit the scope of the Board's obligations in rulemaking.

Further, the Agency apparently believes that because USEPA has stated that the proposal, if adopted, would be approved and because no other participant has offered an alternative to which USEPA has made the same statement*, its proposal is the only alternative and must therefore be adopted. The Agency appears to equate the number of proposals with the number of potential

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*The Board notes the Agency's reliance upon USEPA's letter to support its proposal but is troubled by the Agency's reliance on the letter to argue against any alternatives. The Board questions how a USEPA letter addressing alternatives would be forthcoming. In other words, what is the likelihood of any participant other than the Agency obtaining such a letter in a timely manner?

alternatives. The Board cannot and does not accept this argument. First, the Board notes that the Agency itself has proposed a number of alternatives to its original proposal as the record developed and as it better understood the ramifications of its proposal. Second, it is the province of the Board to determine whether alternatives exist based upon the information in a given record. The Board's determination cannot be limited in this respect solely by the number of proposals filed in a rulemaking proceeding. Again, under Section 28.2 of the Act, the Board is to determine whether the proposed rule fully meets the applicable federal law. To yield to the procedure suggested by the Agency would be a clear abdication of the Board's mandate under the Act.

The Board is not persuaded that the Agency's proposal is the only alternative which would be approvable. USEPA has stated that the Agency's proposal is approvable. However, this does not mean that ipso facto other alternatives would not also be approvable. In fact, a representative of USEPA, in response to a question regarding whether the substance of the proposal could be altered, testified at hearing as follows:

> I think our position would be that there is a set of words and substance that we have evaluated and indicated to the Board is acceptable. I mean, you can rewrite that a zillion different ways, depending on how you choose to rewrite it. It is possible that the substance has been changed inadvertently, or whatever. I think that our position would be if somebody wants to take that risk they are certainly free to do so. If on the other hand they choose not to take that risk, they have before them a set of words and substance that we have determined to be acceptable. So I would say that, yes, it can be changed but somebody runs a risk when they change it. (R. 311.)

USEPA itself recognizes that there could be other approvable alternatives.

Herein lies the problem. The Board is not persuaded by the record that other alternatives do not exist. USEPA recognizes that other alternatives may in fact exist. The Agency itself argues that if alternatives do exist, the Board must consider economic reasonableness and technical feasibility. But the Agency decided early on that its proposal, and only its proposal*, would fully meet the applicable federal law: therefore, the Agency concluded that its proposal was the only

*Query how the Agency could know, on December 7, 1989, that no other participant would obtain a similar letter from USEPA by the close of the record on February 9, 1990.

alternative; therefore, the Agency determined not to offer evidence of economic impact, economic reasonableness, or technical feasibility. Without information in the record on economic impact and technical feasibility, the Board is precluded from considering, in any meaningful way, alternatives to the Agency proposal. It would appear, therefore, that the Board and the Agency are at an impasse.

The Board therefore adopts a construction of the Act which comports with the plain direction of the legislature to decide that proposed rules fully meet the applicable Federal law. Consistent with its above-described construction of Section 28.2 of the Act, the Board will proceed to second notice with the proposed amendments to the extent that the Board can take into account, based upon the record, those considerations required under Section 27(a) of the Act and to the extent that the Board can determine that the proposed amendments fully meet the applicable federal law.

(3) Applicable Federal Law

Section 28.2(b) of the Act states that "[w]henever a required rule is needed, the Board shall adopt a rule which fully meets the applicable federal law,..." The third significant issue in this proceeding is: what will fully meet the applicable federal law? Note that this issue is closely related to, but is distinguishable from, the issue of what forms the basis for an Agency certification of a proposal as "required."

In its Certification the Agency stated that several sections of the CAA support the "general" basis for this regulatory package.
The Agency stated:

> Section 110 of the CAA requires that each state adopt and submit to USEPA a plan which provides for the implementation, maintenance and enforcement of national ambient air quality standards (NAAQS) for criteria pollutants. Ozone is a criteria pollutant with a primary NAAQS adopted by USEPA on February 8, 1979. Section 110(a)(2)(h)(ii) gives the Administrator of USEPA the authority to require revisions to the State Implementation Plan (SIP) whenever it is determined to be substantially inadequate to achieve the national ambient air quality primary or secondary standard. The proposed regulations are to be part of the Illinois SIP for ozone. The proposed revisions address regulations that have been identified as deficient by USEPA.
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> (Agency Certification, p. 2).

Further, the Agency states:

> Additional federal justification establishing this regulatory package as a "required rule" differs widely for each deficiency. A description of the additional federal justification for each deficiency is provided in attached Table 1.
>
> (Agency Certification, p. 3).

The Agency submitted a list of the justification documents as part of its proposal. Included in this list of "justification" documents are: the SIP call letter; USEPA's proposed post-1987 ozone and carbon monoxide plan, published November 24, 1987; the clarification of Appendix D of the November 24, 1987 publication (Blue Book), and various other correspondence and memoranda.

While the Board has generally accepted the required nature of this proceeding as being based upon certain sections of the Clean Air Act* and the SIP Call Letter, the Board notes that it is troubled by the Agency's reliance upon some of these other documents to support the substantive aspects of the proposed amendments. The Board has serious questions about how much weight to give to these "justification" documents. For example, the November 24, 1987 Federal Register--entitled "State Implementation Plans; Approval of Post-1987 Ozone and Carbon Monoxide Plan Revisions for Areas Not Attaining the National Ambient Air Quality Standards; Notice"--is simply that, a Notice of Proposed Policy. Nowhere in the record is there any indication that this document was approved, or finalized, after the consideration of public comment. In other words, this is merely a proposal that has not been adopted. Moreover, the Blue Book, which has been cited widely in this proceeding, is a "clarification" of the appendix to the November 24, 1987, "proposed policy." If the Federal Register notice is "one step removed" from being a federal requirement, is the Blue Book two steps removed? The Board realizes that this question seems awkward, but the record gives little insight into the relative merit of each document.

The Illinois Steel Group's (ISG) Memorandum of Law Regarding Adoption of the RACT Rules (P.C. #9), filed January 18, 1990, addresses the Board's concerns to a certain extent. The ISG argues, in part, that:

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*The Board notes that, on February 15, 1990, it completed the rulemaking of R88-30, Limits to the Volatility of Gasoline, which has the potential to result in the reduction of 200 tons per day of ozone precursor emissions during the months of July and August in the Chicago metropolitan area alone. Compliance with this new regulation should do much to assist the state in demonstrating compliance with the NAAQS for ozone.

> [t]he IEPA has confused federal "law" with federal" guidelines", when the two are not the same. Federal "law" clearly encompasses statutory provisions, as well as administrative provisions enacted through legal procedure. Federal agency findings lack the force of law when they are arrived at through procedures other that those required by law. (ISG Memo, at 10).

The Board agrees. Therefore, in reviewing the proposed amendments which the Board will proceed with after considering economic reasonableness and technical feasibility, the Board will look to ensure satisfaction of the requirements of federal law, not federal guidance. The Board will address this more specifically, where appropriate, under the individual deficiencies.

Finally, the Board notes that after the December 15, 1990 hearing, USEPA sent to the Board (P.C. 8) some materials which included a draft report of "Technical Support Documentation For Federal RACT Rules For Illinois". This document contains information which purports to address technical support, environmental impacts and costs of control for USEPA's proposed amendments to Illinois' SIP. The Board notes that under some of the Deficiencies involved in this proceeding, this federal document suggests extremely high cost per ton of VOM reduced. However, the Board cannot place great reliance upon this information. The Board notes that this information is part of a "Draft Report" subject to public comment in the federal rulemaking and that the Board had no one to question as to the contents of the draft document. In other words, this document is equivalent to unsworn testimony. As such, the Board will give little weight to its contents.

THE DEFICIENCIES

Some general remarks concerning the Board's economic analysis in this proceeding are in order, prior to discussing particular deficiencies. As has been previously discussed, the Board must consider the broad duty and authority dictated by Section 27(a) to "take into account" various factors in light of "the specifications of particular classes of regulations elsewhere in [the] Act". Again, as earlier discussed, the specifications of Section 28.2(b) are that the Board "adopt a rule which fully meets the applicable law", "which is not inconsistent with any substantive environmental standard", and that the Board "consider all relevant evidence in the record." It is clear from the prior case law interpreting Section 27 that the Board need not "produce direct evidence that the control technologies necessary to meet...standards are technically feasible and economically reasonable for a substantial number of the sources throughout the state, [as this] would necessarily

limit the Board's regulations to a contemplation of existing technology only." Shell Oil, supra, 346 N.E.2d 221. What level of consideration lesser than this is sufficient to avoid the invalidation of rules as "clearly arbitrary, unreasonable or capricious" (Illinois Coal Operator's Association v. Pollution Control Board, 59 Ill. 2d 305, 310, 319N.E.2d 782, 785, by a reviewing court has not been clearly articulated in the case law.

The Board must then, on a case-by-case basis, determine what level of consideration of what quantity of information is necessary to reasonably support adoption of a rule.

As the Board has noted throughout this Opinion, the record supporting many of the proposed rules is thin, and much of the economic information which is in this record can be afforded little weight. Because of the mandate of Section 28.2 (which the Board also construes as including a directive to act consistent with the milestone dates of the Wisconsin settlement), the Board has no time, in this docket, to itself strengthen this record or to direct and allow the participants to do so. The Board must "take the record as it finds it."

Giving the words "take into account" their ordinary meaning,* in some deficiency areas the Board is simply unable to fulfill its statutory directive based on this record. While the Board is highly aware that rulemaking decisions must be made on less than perfect information in order to timely comply with federal deadlines, the Board will not presently proceed to adopt rules whose reasonableness, for the State of Illinois, cannot be determined by this technically qualified Board even in light of the long history of these proceedings. Where the Board cannot, in all good conscience, presently proceed to make the required findings, the Board will defer further consideration to a Docket B, which was opened on February 8, 1990.

The Board wishes to emphasize that its approach in this particular proceeding should not be taken as representative of the approach to be taken in all future Section 28.2 rulemakings; each must be handled based on the specifics of the mandate to implement the federal program involved.

Finally, the Board notes that because of the limited time available to review the extensive record and to prepare this opinion, the Board is only addressing those issues which are dispositive of a given proposed amendment. In other words, where

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*The Shell Oil court, quoting from J.E. Rodale, The Synonym Finder, described the phrase in its general sense as meaning "allow for, make allowances for, weigh carefully, consider, take into consideration, bear in mind, remember, realize, appreciate, have in one's mind." 346 N.E.2d at 219.

the Board has determined not to proceed with an amendment based upon insufficient information in the record for the Board to take into account the economical reasonableness, the Board's analysis stops at that point. That is not to imply that the proposed amendment stands or falls on economic reasonableness alone. It is simply the attempt to expedite this proceeding to meet the schedule in the Settlement Agreement that the Board does not go on to address the other Section 27(a) considerations.

DEFICIENCY 1 - Surface Coating Exemption

To correct this deficiency, the Agency's proposed amendments included revisions to Sections 201.146(g), 215.206, and 215.211. Those revisions are discussed in detail below.

Revisions to Section 201.146(g) would have eliminated the exemption from permit requirements for painting lines using 5,000 gallons per year or less at facilities in the state that will be subject to the coating requirements in Part 215, Subparts F an PP.

Revised Sections 215.206(a) and (b) pertained to the counties of Cook, DuPage, Kane, Lake, McHenry, Will, Macoupin, Madison, Monroe and St. Clair for coating categories other than wood furniture coating. Subsection (a) would have reduced the exemption for the different RACT categories of coating lines from 25 T/yr for the coating plant to 15 lb/day for each RACT grouping of coating lines. Subsection (b) would have stated that any coating line that has ever been subject to the limitations of Section 215.205 cannot use reductions in emissions to qualify for the exemption under Section 215.206(a).

Section 215.206(a)(3) would have deleted an exemption for National Can Corporation as it is no longer operating in Loves Park, Illinois.

Section 215.206(d) would have continued the current 25 T/yr exemption level for wood furniture coating facilities in the state. The requirement that emissions be limited by an operating permit is deleted. The exemption is also altered by the addition of a provision that a wood furniture coating plant will continue to remain subject to Subpart F in certain counties once it becomes subject to this Subpart.

New Section 215.211(d) was added to allow newly subject facilities one year from the date of adoption to achieve compliance with the regulations.

At hearing on December 14, 1989, in response to the Hearing Officer Order questions noted above, the Agency offered the following responses. The proposed changes conceivably would go

to plants that are involved in automobile or light duty truck coating, can coating, coil coating, fabric coating, vinyl coating, metal furniture coating, large appliance coating, magnet wire coating, miscellaneous metal parts and products coating, and heavy off highway vehicle products as those operations are defined in the Board's rules.

In response to question 2 relating to which sources would be affected, the Agency stated:

> This is a very hard question to answer, because we are trying to predict the effect for facilities that we really don't have very good records on. Obviously, we have concentrated our efforts on the larger facilities. That is where we have detailed permit application information....Roughly, I have to say, that if we are going from 25 tons per year to an applicability that is on the order of one ton per year, you could not [sic] double the number of affected facilities. It might be triple. It might be fifty percent increase. (R. 168-169.)

In response to the question regarding anticipated economic effects, the Agency stated:

> All I can say is sort of a broad statement that the effects could be variable. There are some facilities who I would expect already comply with the rule or would have to have minimum changes in operations....There are others that would have to make minor changes, switch coatings, maybe some coincidental equipment changes that they might want to make anyway, or some other changes in operations...There are also others where there could be significant changes. I mean, they might have to undertake expenditures to alter their process equipment or to install control equipment. Process equipment changes would be necessary in some cases to allow compliant coatings to be used. (R. 170.)

Based upon the record, the Board found that this amendment will have an effect. In light of the generality of this information and the lack of economic information in the record, the Board was not persuaded that this amendment is RACT for Illinois. The Board, therefore, did not proceed with any of these proposed amendments, except for one. The Board found that the exemption for National Can Corporation's Loves Park facility can be deleted as it is no longer in operation. The Board has, therefore, retained this deletion.

The Board also changed the language from the first notice proposal to properly reflect the language of Section 215.206 currently on file with the Secretary of State's Administrative

Code Division. This change was made in response to suggestions made by JCAR staff.

DEFICIENCY 4(a) - Fabric Coating Definition

The Agency's proposal also included a revised definition of "fabric coating" which clarifies that coating operations include saturation of the substrate.

At hearing on December 14, 1989, in response to Hearing Officer Order, the Agency's response to the questions noted above includes the following:

> I don't know of any sources that would be affected by the proposed rules. I also doubt the proposed rule would lead to a significant change...
>
> Well, based on my previous answer I would expect there to be no [economic] effect on facilities. Of course, there might be somebody out there that could be significantly affected if they had to install control equipment. (R. 172-173.)

Based upon this testimony, the Board proceeded with the proposed amendment, as written. Taking into account the Section 27(a) considerations, the Board found that proceeding with the proposed amendment was appropriate.

DEFICIENCY 4(b) - Paper Coating Definition

The revised definition of "paper coating" offered by the Agency, would have specified that coating operations include saturation of the substrate.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency states:

> At this point, I am only aware of one facility that would be affected by the proposed rule, and that's Riverside Laboratories. That's the only operation where I know that the change in the language by including the term saturation as a means of how paper coating can be applied would bring that facility into the scope of the Board's paper coating rules...
>
> ...the effect on Riverside can certainly be significant if it had to install control equipment. (R. 174-175.)

The Board notes that Riverside has been an active participant in this proceeding--Riverside participated at hearing and submitted post-hearing comments, i.e., Public Comment #20. Generally, Riverside objected to the Agency's proposed

modification because it argued that there is no basis for including saturation operations in the definition of paper coating. Riverside argued that the Agency failed to support the modification by appropriate technical or economic data and has chosen to ignore the technical feasibility and economic reasonableness requirements of the Act. In addition, Riverside argued that its process is unique and is not comparable to paper coating as envisioned by the Agency or the Board. Riverside suggested that the Board should follow its previous rulings and the rulings of the State and Federal Courts and reject the modification proposed by the Agency.

Based upon the record, the Board found that this amendment will have an effect. However, because the information in the record indicated that at least Riverside will be affected by this change, and because the only information in the record relating to economic reasonableness and technical feasibility of the Agency's proposal was submitted by Riverside in opposition to the Agency proposal*, the Board was not persuaded that these rules are RACT for Illinois. The Board notes as an aside that it is aware of its prior rulings in this area and that its prior rulings need not preclude, in and of themselves, a rulemaking whereby Riverside's operations are brought within the purview of the paper coating rules. In other words, the Board held that Riverside does not fall within the existing definition of paper coating, based upon the history of that term's adoption. PCB 87-62, January 5, 1989. That does not mean that Riverside's operations are forever precluded from being brought within that definition. If a rulemaking record supports including Riverside's operations in the definition of paper coating, then the Board can so promulgate.

However, in this proceeding, the record does not support proceeding with the Agency's proposed amendments.

DEFICIENCY 4(c) - Transfer Efficiency

The revised definition of "transfer efficiency" changed the transfer efficiency calculation from a total coating volume basis to a coating solids basis.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency stated:

> ...only two categories of coatings are in that universe. The first is automobile coating which

*The Board notes that the information and argument in the Agency's post-hearing comments is generally directed towards Riverside's alternate proposal and the information offered by Riverside at hearing.

> specifically includes transfer efficiency in certain footnotes for adjusted standards. There is only one automobile manufacturing plant in nonattainment areas and that is Ford Motor Company on Torrence Avenue. The other category is wood furniture coating, which again requires a minimum transfer efficiency of 65 percent for application of surface--whatever, wood furniture surface coating.
>
> I don't believe any of the facilities would be affected by the proposed rule.
>
> Based upon my previous analysis, I don't think it will have any [economic] effect. (R. 177-178.)

Based upon this testimony, the Board did proceed with the proposed amendments, as written. Taking into account the Section 27(a) considerations, the Board found that proceeding with the proposed amendment is appropriate.

DEFICIENCY 4(d) - Coating Definition

Revised Section 211.122 specified a new definition for "coating" that included materials applied to a substrate for decorative, protective or other functional purposes. This section also changed the statewide definition of "can coating", "coating", "coil coating", "large appliance coating", "prime coat", "prime surface coat", and " topcoat" so they are consistent with the definition of coating and to clarify that coating operations include saturation of the substrate. Finally, revised Section 215.104 changed the definition of "furniture coating application" so that it is consistent with the definition of coating in Section 211.122.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency stated:

> This change conceivably could apply to all the coating categories in the Board's rules. As a practical matter, the type of situation where this change has become important is for applications where a coating is applied for something other than appearance purposes, that is decoration or corrosion resistance, what is otherwise known as a functional coating. My belief is that functional coatings appear to most commonly arise in the paper coating category and miscellaneous metal parts.
>
> If there is somebody out there who is affected I would have to classify the effect as variable. Returning to the discussion for general coating applicability, there might be minimal costs, there might be some minor costs if some changes have to be made. But they are not

> particularly difficult. Or there could be significant cost or efforts required. (R. 179-181.)

On February 9, 1990, Comment #19 was filed by Modine Manufacturing (Modine). Modine stated that under the current Board rules it is not subject to the Board's coating regulation. Modine stated that it does not believe that this new definition of coating which expands the coverage of the term from that understood in the USEPA's Control Technology Guideline (CTG), will impose additional compliance costs on Modine.

Based upon the record, the Board found that this amendment will have an effect. In light of the generality of this information and the lack of economic information in the record, the Board was not persuaded that this amendment is RACT for Illinois. As a result, the Board did not proceed with this proposed amendment.

DEFICIENCY 4(e) - Vinyl Coating

Revised Section 211.122 changed the definition of "vinyl coating" to exclude organisols and plastisols.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency stated:

> I am not aware of anyone that would actually be affected by the proposed rule. I am not aware of any circumstance where organisols or plastisols have been applied and given credit toward compliance for a vinyl coating plant. (R. 182-183.)

Based upon this testimony, taking into account the Section 27(a) considerations, the Board did proceed with the proposed amendments, as written. As the record indicates that it will or should have no economic effect upon the people of the State of Illinois, the Board found that proceeding with the proposed amendment is consistent with the statutory requirements.

DEFICIENCY 4(f) - Automobile or Light Duty Truck Refinishing

This definition was added in Section 211.122 to indicate that the term includes the repainting of used automobiles or light duty trucks.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency stated:

> ...I would say that the only person who might be affected would have been Ford Motor Company in Illinois, or in the Chicago area, who manufactures automobiles...My understanding is that refinishing of

> automobiles at Ford Motors has been considered as a part of the automobile coating operation. So I don't believe they are affected by the rule.
>
> Based on my analysis there should be no [economic] effects. (R. 184-185.)

Based upon this testimony, taking into account the Section 27(a) considerations, the Board did proceed with the proposed amendments, as written. As the record indicates that it will or should have no economic effect upon the people of the State of Illinois, the Board found that proceeding with the proposed amendment is consistent with the statutory requirements.

DEFICIENCY 9 - Test Methods

This deficiency contains the bulk of the proposed amendments. Generally, the test methods and procedures define the manner in which measurements to determine compliance with an emission limit or other control requirement shall be conducted. Provisions addressing testing are located throughout 35 Ill. Adm. Code 215. For test measurements to be consistent and reliable, the methods and procedures should be well-defined, standardized, and up-to-date. Numerous changes are proposed to accomplish this general objective. For convenience, the Board will address the proposed amendments in the numerical order used by the Agency in its Statement of Reasons, filed with the proposal.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency discussed the amendments proposed to the test methods in a general context, rather that on an item by item basis. As to all of the proposed changes under deficiency no. 9, the Agency stated:

> Testing deficiency covers several different aspects. The first one is sort of the tightening of testing methods. I would like to describe that as an incremental effect that will affect everybody, if and when they have to test. *** The tightening of the test procedures will add some percentage to those costs. Whether it is ten percent or 20 percent, I don't know exactly.
>
> Now, turning again to another general category with regard to test methods, that is discretion, elimination of discretion with regard to test methods, elimination of discretion with regard to emission limits. Based on my experience, the Agency has exercised its discretion rarely, if at all, so with those particular categories of eliminated discretion I would not expect to see a significant impact.

> The final point of testing is what I would call the other changes, some of the changes to compliance procedures, applicability levels. Again, for those things where it is affected, where those particular sources or categories are affected, I would not see a significant change based on current practice. We have not been interpreting the rules or carrying out the rules significantly different than the way they are proposed to be changed. (R. 186-189.)

1. Section 211.122 Definition of Alternative Test Method

The Board deleted this definition at First Notice because the definition as written "was too vague to meet APA [Administative Procedure Act] requirements". A reference to 40 CFR 60.2 was inserted in the one section where this definition was used.

2. Section 211.122 Volatile Organic Material Content

A new definition of "volatile organic material content" was proposed for inclusion in Section 211.122. This term is used in and supports the following sections dealing with the volatile organic material content of substances: Sections 215.208, 215.409, 215.467 and 215.614. The volatile organic content of a coating or similar material is defined as the emissions of volatile organic material which would result from the use or release of the material without control equipment.

Taking into account the Section 27(a) considerations, the Board determined that it did not believe that this definition, in and of itself, would have any economic effect on the people of the State of Illinois. It is simply a definition of a term used in the rules. Thus, the Board did proceed to second notice with the definition as proposed at first notice.

At second notice the Board added "Volatile Organic Material" to the definition and spelled out the abbreviation "Kg" the first time it was used. These changes were made in response to suggestions made by JCAR staff.

3. Sections 215.102(a) Testing Methods for VOM Emissions

Section 215.102(a) was proposed to provide current methods for testing organic material and volatile organic material emissions. The section was expanded to include measurement of vent flow rate as well as concentration to address emissions in quantitative terms., i.e., kg/hour. The accepted methods for measurement are all USEPA methods. This section is referenced by Section 215.127(a), 215.410(a), 215.464(a), 215.585(a), 215.615(a) and 215.886(a). (The Board notes that Section 215.585 has been used in R88-30, Limits to Gasoline Volatility, adopted

February 15, 1990. Thus, the changes proposed to Section 215.585 in this proceeding have been moved to Section 215.586.)

The Board notes that these proposed changes specify that testing is to be conducted in accordance with Section 215.102. As this is basically an updating of the test methods, taking into account the Section 27(a) considerations, the Board determined that it does not believe that it would have a significant economic effect upon the people of the State of Illinois. Therefore, the Board retained the proposed amendments, as revised in accordance with the discussion under number 6 below, at second notice.

The Board notes that in post-hearing comments, Abbott Laboratories (P.C. 21) proposed that the Board amend Section 215.102(b)(2). While Abbott's proposal may have merit, the Agency specifically requested that any other proposals be processed separate from this proceeding. Thus, the Board does not address Abbott's proposal at this time. Further, the Board notes that Abbot has a pending site-specific rulemaking (R88-14) in which the proposed amendment can be considered.

4. Section 215.105 Incorporations by Reference

Section 215.105 was revised to update the edition or issuance date of certain materials incorporated by reference and to add three new items: American Society for Testing and Materials Methods D2504-83, D2382-83 and D4457.

This is simply a matter of updating the incorporations by reference section. The Board retained the proposed amendments at second notice.

5. Deletion of Equivalent Control Requirements

This proposed section would have eliminated the Agency's authority to approve equivalent control measures which are not specifically identified in the rule. Similar changes were also proposed to eliminate equivalent control requirements in Sections 215.124, 215.241, and 215.601.

The Board received objections to this amendment. On February 9, 1990, Allsteel, Inc., filed its comments which include the following statement:

> The Agency's proposal narrows the Agency's own authority to approve alternative test methods and requires all such changes to be treated as SIP revisions subject to USEPA approval. This proposal is extremely unrealistic given the time frames of the SIP approval process and leaves open the question of enforcement while approval is pending. The proposal should be rejected. (P.C. 14,

at p.4.)

Also on February 9, 1990, Stepan Company stated:

> Stepan would also like to reiterate and underscore the comments of other industry representatives relating to the necessity of insuring flexibility with regard to the selection of test methods. The selection of an appropriate test method is by nature site-specific. A regulatory prescription of a single test methodology under these regulations is unduly burdensome and must be rejected by the Board. (P.C. 12, at 3-4.)

The Board did not proceed with these proposed changes at second notice. Taking into account the considerations of Section 27(a), the Board was not persuaded that the proposed changes constitute RACT in Illinois. The Board has no idea of what the Agency has approved in the past. If the Agency has approved certain equivalent controls, what will be the status of those approvals? Further, the Board was concerned by the comment that test methods are by nature site-specific. Before the Board adopts a specific test method for a class of operations, the Board must have information indicating that it is the appropriate test. Finally, the Board questioned the necessity of deleting alternate equivalent controls. So long as equivalency is demonstrated, what difference does it make how the controls are implemented?

As the Board was not persuaded that the proposed changes constitute RACT in Illinois, the Board did not proceed with the changes in this subdocket.

6. Deletion of Test Procedures as "Approved by the Agency"

The proposed revisions deleted the use of unspecified procedures as "approved by the Agency" for determination of compliance. A new section, Section 215.128 was proposed to provide a specific compliance method. This new method was adopted by USEPA for its New Source Performance Standard, 40 CFR 60, Subpart Kb. Similar changes were proposed to Sections 215.124(a)(8), 215.208(a), 215.447(a)(1) and (2), 215.464(a), 215.582(b) and 215.586(a), 215.603(c).

The Board notes that the comments discussed above also apply to these proposed actions. However, the Board did proceed with these proposed changes, as amended at second notice. Generally, the Board has no objection to specifying test methods for certain processes. However, the record does not support limiting the potential universe of test methods. The Board added a provision in the sections which specify test methods allowing for alternate test methods. The language that the Board has added is basically as follows:

> Any alternate test method must be approved by the Agency, which shall consider data comparing the performance of the proposed alternative to the performance of the approved test method(s). If the Agency determines that such data demonstrates that the proposed alternative will achieve results equivalent to the approved test method(s), the Agency shall approve the proposed alternative.

The Board was not persuaded by the record to limit the types of test methods that may be employed. The Board's concern was that the test results be accurate. If an alternate method is at least as accurate as the specified method and someone prefers to use it, so be it.

USEPA's concern appears to be that the most current methods be employed and that all methods be specified in the SIP. (See Blue Book, p. 2-12). Where equivalency is demonstrated, the alternate test method may be the most current. As far as the test method being specified in the SIP, if a specification of test methods in an operating permit does not suffice, the Board can, if so requested, update its rules periodically to include the alternate test methods the Agency has approved.

7. Request by the Agency for Testing

Several sections provided for formal demonstrations of compliance by testing upon a reasonable request by the Agency. Those provisions were proposed to be deleted and replaced by paragraph (b) in new Section 215.127 and Section 215.128. These proposed sections addressed test methods and procedures. The wording of the new paragraph only addressed a request by the Agency for a formal demonstration of compliance by testing. It did not address the method of testing or other means by which compliance or noncompliance may be determined.

Sections involved are as follows: Sections 215.124(a)(8), 215.404(a)/215.410(b), 215.464(a)/215.464(b), 215.565(b), 215.615(b), and 215.886(b).

Basically, the new language proposed was similar to the language being deleted. The differences were as follows--(1) a "reasonable request" is now a "request", and (2) "methods approved by the Agency" has been changed in accordance with the

*The Board notes that virtually identical language was added to Section 215.585(g) in R88-30, Limits to Gasoline Volatility, adopted February 15, 1990. As the language was the result of an agreement with the Joint Committee on Administrative Rules (JCAR), the Board does not anticipate an objection from JCAR.

discussion under Paragraph no. 6, above.

The Board was concerned by the deletion of the word reasonable in these sections. Although the word "reasonable" has been the source of many a discussion with the Joint Committee on Administrative Rules (JCAR), the Board found that this is a situation where "reasonable" must remain. "Reasonable" adds to this provision the notion that an unreasonable request may be the subject of an appeal. Were it not to be included, any and all requests by the Agency would require compliance. The Board was not persuaded to make such a change based upon this record. Thus, the term "reasonable" was added to each of the sections involved to maintain the status quo. The Board sees no reason why this should threaten federal approvability.

8. Advance notice to the Agency for testing

Certain of the existing sections require advance notice to the Agency for emissions testing to demonstrate compliance. These sections were proposed for deletion. New sections were proposed which required the same notice to the Agency. Again, the Board did not see any substantive change. It appeared to be primarily a clean-up of the rules. Sections involved are as follows: Sections 215.124(a)(9), 215.127(c), 215.128(b), 215.410(c), 215.464(c), 215.586(c), and 215.615(c).

As there is little, if any, difference from the present language, the Board did proceed to second notice with the proposed amendments.

9. Addition of emission test methods

New sections were proposed which provided current test methods and procedures for determination of compliance with these requirements. The test method is provided in paragraph (a), which refers to Section 215.102(a). The sections involved were the same as those noted in the two preceding paragraphs above.

The Board did proceed to second notice with these changes. The language in issue here merely refers to the test methods in Section 215.102.

Miscellaneous

Much of the remainder of the proposed amendments were specific references to the up-dated test methods. The Board retained the specific references; however, as noted above, the Board added language providing for alternate test methods.

In Section 215.602, Exemptions, the Board retained the proposed amendment which translated the gallons per month into liters per month. However, the Board did not proceed with the

proposed sentence that stated:

> If a perchloroethylene dry cleaning operation is ever subject to the requirements of this Subpart, the requirements of the Subpart will continue to apply to the operation notwithstanding a reduction in emissions so as to qualify for exemption.

The record did not provide substantive reasons why the provision was included in the proposal. The Board was troubled by what could result from this provision. It would appear that of two separate operations, both doing the same amount of business, one could be subject to the rules and the other would not. The Board requires more information before it will promulgate a rule to have such an effect.

DEFICIENCY 11 - Petroleum Refinery Monitoring Program for Leaks

Revised Section 215.447(b)(1) removed the present exemption from leak monitoring requirements for inaccessible valves at petroleum refineries statewide. New Section 215.447(b)(2) provided for inaccessible valves at petroleum refineries statewide to be tested at least once each calendar year. Refineries must provide an identification of these valves and a reason why these valves are inaccessible. Any valve not identified under this section falls instead under the normal monitoring program for leaks given in Section 215.447.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency stated:

> This rule applies to petroleum refineries. I believe there are six in the state: Clark, Blue Island; Mobil, Joliet; Union Oil, Lemont; Clark, Wood River; Shell, Wood River; and Marathon, Robinson. Texaco, Lawrenceville is currently in a shut down status. I am not sure if it would start up again. *** I believe they would all be affected. All would be affected, as I believe all of them would have at least one so-called inaccessible valve. (R. 190-191.)

With respect to anticipated economic affects, the Agency stated:

> This I can't really answer. I can only say it would depend on some of the inaccessible components they have, the degree of inaccessibility, and their capabilities to reach those inaccessible components. In general, because we are talking about changes in practices, not installing new equipment necessarily, I would characterize these as sort of at most an intermediate level of impact. (R. 191.)

This proposed amendment poses a somewhat more difficult analysis. On the one hand, noone has challenged or objected to the proposed amendment. On the other hand, the testimony suggests that there will be impact, but the extent of that impact appears to be uncertain, yet not minimal.

Arguably, based upon this testimony, the Board could have assessed economic reasonableness considerations. However, the Board noted that the difficulty of reaching these "inaccessible" components could differ from source to source. Unfortunately, the record did not provide much guidance. Further, the Board was aware that requiring monitoring of inaccessible valves could raise health and safety concerns.

In light of these uncertainties, the Board was not persuaded to proceed with the proposed amendment. Although the Board was aware of the documents the Agency submitted in support of this amendment (i.e., the SIP Call Letter; the Blue Book, page 2-13; the Federal Letter; and the Settlement Agreement), the Board noted that none of these documents specifically address the economic or technical implications of complying with the rule.

Based upon the record, taking into account the considerations of Section 27(a), the Board was not persuaded that the proposed amendment is RACT for Illinois.

DEFICIENCY 13 - Bulk Gasoline Plant Exemption

Revised Section 215.581(e)(2) changed the statewide exemption level of 350,000 gallons per year for "load in" vapor balance systems (Stage I) at bulk gasoline plants throughput to 4000 gallons per day as determined by a 30 day running average.

Revised Section 215.581(f)(1) changed the applicability level for throughput for "load out" vapor balance systems (Stage I) at bulk gasoline plants from 1,000,000 gallons per year to 4000 gallons per day as determined by a 30 day running average. The rule will apply to bulk plants that either (1) distribute gasoline to gasoline dispensing facilities requiring load in vapor balance (Stage I) or (2) are located in Boone, Cook, DuPage, Kane, Lake, Madison, McHenry, Peoria, Rock Island, St. Clair, Tazewell, Will or Winnebago counties.

New Section 215.581(h) provided that newly subject bulk gasoline plants will have one year from the date of adoption of the revised sections to achieve compliance. New Section 215.581(i) added a provision that a bulk gasoline plant will continue to remain subject to Section 215.581 once it becomes subject to this section.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency stated:

> Bulk gasoline plant is a defined term in the Board's rules. It is a facility that receives gasoline from a terminal and then distributes it to smaller facilities. I believe there is somewhere between five hundred and a thousand of those facilities in the State. Many of those already comply with the Board's rules. *** Dr. Reed has already testified that the change in the applicability level doesn't appear to be a very significant change. We are going from 350,000 gallons per year to four thousand gallons per day. Those seemed pretty comparable. However, there might be a couple of facilities where that moves from not being subject to being subject. *** In terms of if somebody becomes subject to the rule, they would have to install a vapor valve system if not already installed. I don't know how much one of those costs. I think I would qualify it as something intermediate. It is hardware that is installed as operational equipment. (R. 192-193.)

Although this proposed amendment would not appear to have much impact, the Board did not proceed. The testimony indicated that there may be some new facilities brought within the purview of the regulation. These new facilities would have to install a vapor valve system, if one is not already installed. However, the record gives no guidance as to how much such a system would cost. The record fails to persuade the Board that these rules are RACT for Illinois. As a result, the Board did not proceed with these proposed amendments in this subdocket.

DEFICIENCY 15 - Solvent Metal Cleaning

Revised Section 215.181 removed the exemptions from control and operating requirements for cold cleaners, open top vapor degreasers and conveyorized degreasers for certain counties. New Section 215.186 allowed newly subject cold cleaners, open top vapor degreasers and conveyorized degreasers one year to achieve compliance from the date of adoption of revised Section 215.181.

At hearing on December 14, 1989, in response to the Hearing Officer Order, the Agency stated:

> We are talking about going from applicability level of 15 pounds per day to eliminating that essentially as zero in VOM emissions. We are looking at a category of sources that we haven't really focused our attention on. So it is hard to speculate. *** There could be quite a few degreasers which currently have not been required to comply with the Board's rule that would be required to comply with the Board's rules. *** I would have to go back to the general description of variable

> economical effects. There may be some degreasers that already comply with the Board's rules but are not subject to those limitations at the present time. There may be other sources which have to make minor changes, installing shut off operating practices. There may be a few sources out there who have to make significant changes, either replacing a degreaser or installing control equipment. (R. 195-196.)

Here too, the record did not persuade the Board that these rules are RACT for Illinois. The Board was unable to determine who might be affected and what effect there might be. The Agency itself admits that this is a category of sources that has not been focused upon. As a result, the Board did not proceed to second notice with this proposed amendment in this subdocket.

STATEWIDE APPLICABILITY

In its final comments, the Agency stated that the following proposed rules apply statewide: all the definitions for Part 211, 35 Ill. Adm. Code 215.447, 215.581, and the sections correcting the test methods deficiency (deficiency 9). The Agency noted that both it and USEPA acknowledged that statewide applicability is not federally required. However, in this proceeding, as well as all other regulatory proceedings, the Agency asserted that the Board may adopt rules that go beyond what is federally required. Apparently, the Agency requests that the Board adopt the proposed amendments so as to apply on a statewide basis.

While the Board does not necessarily agree that it may adopt a rule which goes beyond what is federally required in a Section 28.2 proceeding, the Board notes that the Agency's request is not germane in light of the amendments with which the Board proceeded. The definitional changes and test method up-dates do not lend themselves to application in geographical areas less than state-wide. The proposed amendments which specify applicability in certain geographical areas have been transferred to subdocket (B); thus, the Board is not here presented with the question of whether to make them apply state-wide.

SECTION 215.585

The Board notes that the Order of March 16 ,1990, included amendments to Section 215.585 which were adopted on February 15, 1990, in R88-30(A), Limits to Gasoline Volatility. After the filing of those adopted amendments with the Secretary of State, the Board discovered that two subsections were incorrect; subsections (e) and (h) contained the first notice language without the changes made in response to comments received during the first notice period. As the Secretary of State's Administrative Code Division's regulations do not allow the Board

to file corrections, the Board must correct the language of those subsections by regular rulemaking procedures. As those subsections were adopted pursuant to proper notice and comment and as Section 215.585 was proposed for amendment in this proceeding, the Board simply added the correct language to the Order of March 16 ,1990, so as to effectuate filing of the correct language with the Secretary of State. This was not a substantive change to this proceeding or to R88-30(A). It was simply to get what the Board adopted on February 15, 1990 onto the Secretary of State's official files. The language proposed as Section 215.585 in this proceeding has accordingly been renumbered to Section 215.586.

This opinion supports the following Order.

ORDER

This directs the Clerk to final notice publication in the Illinois Register of the following rules.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD

SUBCHAPTER c: EMISSION STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 211
DEFINITIONS AND GENERAL PROVISIONS

SUBPART A: GENERAL PROVISIONS

Section
211.101 Incorporations by Reference
211.102 Abbreviations and Units

SUBPART B: DEFINITIONS

Section
211.121 Other Definitions
211.122 Definitions

Appendix A Rule into Section Table
Appendix B Section into Rule Table

AUTHORITY: Implementing Sections 9 and 10 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111½, pars. 1009, 1010 and 1027).

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 201: Definitions, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R74-2 and R75-5, 32 PCB 295, at 3 Ill. Reg. 5, p. 777, effective February 3, 1979; amended in R78-3 and 4, 35 PCB 75 and 243, at 3 Ill. Reg. 30, p. 124, effective July 28,

1979; amended in R80-5, at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13590; amended in R82-1 (Docket A) at 10 Ill. Reg. 12624, effective July 7, 1986; amended in R85-21(A) at 11 Ill. Reg. 11747, effective June 29, 1987; amended in R86-34 at 11 Ill. Reg. 12267, effective July 10, 1987; amended in R86-39 at 11 Ill. Reg. 20804, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 787, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7284, effective April 8, 1988; amended in R86-10 at 12 Ill Reg. 7621, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10862, effective June 27, 1989; amended in R89-8 at 13 Ill. Reg 17457, effective January 1, 1990; amended in R89-16 at ____ Ill. Reg. _____, effective _____

SUBPART B: DEFINITIONS

Section 211.122 Definitions

"Accumulator": The reservoir of a condensing unit receiving the condensate from a surface condenser.

"Acid Gases": For the purposes of Section 9.4 the Environmental Protection Act (the Act) (Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$, par. 1009.4), hydrogen chloride, hydrogen fluoride and hydrogen bromide, which exist as gases, liquid mist, or any combination thereof.

"Actual Heat Input": The quantity of heat produced by the combustion of fuel using the gross heating value of the fuel.

"Aeration": The practice of forcing air through bulk stored grain to maintain the condition of the grain.

"Afterburner": A device in which materials in gaseous effluents are combusted.

"Air Dried Coating": Coatings that dry by the use of air or forced air at temperatures up to 363.15^{o} K (194^{o} F).

"Annual Grain Through-Put": Unless otherwise shown by the owner or operator, annual grain through-put for grain-handling operations, which have been in operation for three consecutive years prior to June 30, 1975, shall be determined by adding grain receipts and shipments for the three previous fiscal years and dividing the total by 6. The annual grain through-put for grain-handling operations in operation for less than three consecutive years prior to June 30, 1975, shall be determined by a reasonable three-year estimate; the owner or operator shall document the reasonableness of his three-year estimate.

"Architectural Coating": Any coating used for residential or commercial buildings or their appurtenances, or for industrial buildings which is site applied.

"Asphalt": The dark-brown to black cementitious material (solid, semisolid or liquid in consistency) of which the main constituents are bitumens which occur natrually or as a residue of petroleum refining.

"Asphalt Prime Coat": A low-viscosity liquid asphalt applied to an absorbent surface as the first of more than one asphalt coat.

"Automobile": Any first division motor vehicle as that term is defined in the Illinois Vehicle Code (Ill. Rev. Stat. 1987, ch. 95½, pars 1-100 et seq.).

"Automobile or Light-Duty Truck Manufacturing Plant": A facility where parts are manufactured or finished for eventual inclusion into a finished automobile or light-duty truck ready for sale to vehicle dealers, but not including customizers, body shops and other repainters.

"Automobile or Light Duty Truck Refinishing": the repainting of used automobiles or light duty trucks.

"Batch Loading": The process of loading a number of individual parts at the same time for degreasing.

"Bead-Dipping": The dipping of an assembled tire bead into a solvent-based cement.

"British Thermal Unit": The quantity of heat required to raise one pound of water from 60° F to 61° F (abbreviated btu).

"Bulk Gasoline Plant": Any gasoline storage and distribution facility that receives gasoline from bulk gasoline terminals by delivery vessels and distributes gasoline to gasoline dispensing facilities.

"Bulk Gasoline Terminal": Any gasoline storage and distribution facility that receives gasoline by pipeline, ship or barge, and distributes gasoline to bulk gasoline plants or gasoline dispensing facilities.

"Can Coating": The application of a coating material to a single walled container that is manufactured from metal sheets thinner than 29 gauge (0.0141 in).

"Certified Investigation" A report signed by Illinois Environmental Protection Agency (Agency) personnel certifying whether a grain-handling operation (or portion thereof) or grain-drying operation is causing or tending to cause air pollution. Such report must describe the signatory's investigation, including a summary of those facts on which he relies to certify whether the grain-handling or grain-drying operation is causing or threatening or allowing the discharge or emission of any contaminant into the environment so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board (Board) under the Environmental Protection Act (Act). The certified investigation shall be open to a reasonable public inspection and may be copied upon payment of the actual cost of reproducing the original.

"Choke Loading": That method of transferring grain from the grain-handling operation to any vehicle for shipment or delivery which precludes a free fall velocity of grain from a discharge spout into the receiving container.

"Cleaning and Separating Operation": That operation where foreign and undesired substances are removed from the grain.

"Clear Coating": Coatings that lack color and opacity or are transparent using the undercoat as a reflectant base or undertone color.

"Closed Purge System": A system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow inducing devices that transport liquid or vapor from a piece or pieces of equipment to a control device, or return the liquid or vapor to the process line.

"Closed Vent System": A system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device, or return the gas or vapor to the process line.

"Coal Refuse": Waste products of coal mining, cleaning and coal preparation operations containing coal, matrix material, clay and other organic and inorganic material.

"Coating Applicator": Equipment used to apply a surface coating.

"Coating Line": An operation where a surface coating is applied to a material and subsequently the coating is dried and/or cured.

"Coating Plant": Any building, structure or installation that contains a coating line and which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control).

"Coil Coating": The application of a coating material to any flat metal sheet or strip that comes in rolls or coils.

"Cold Cleaning": The process of cleaning and removing soils from surfaces by spraying, brushing, flushing or immersion while maintaining the organic solvent below its boiling point. Wipe cleaning is not included in this definition.

"Complete Combustion": A process in which all carbon contained in a fuel or gas stream is converted to carbon dioxide.

"Component": Any piece of equipment which has the potential to leak volatile organic material including, but not limited to, pump seals, compressor seals, seal oil degassing vents, pipeline valves, pressure relief devices, process drains and open ended valves. This definition excludes valves which are not externally regulated, flanges, and equipment in heavy liquid service. For purposes of 35 Ill. Adm. Code 215, Subpart Q this definition also excludes bleed ports of gear pumps in polymer service.

"Concentrated Nitric Acid Manufacturing Process": Any acid producing facility manufacturing nitric acid with a concentration equal to or greater than 70 percent by weight.

"Condensate": Hydrocarbon liquid separated from its associated gasses which condenses due to changes in the temperature or pressure and remains liquid at standard conditions.

"Control Device": For purposes of Subpart Q, an enclosed combustion device, vapor recovery system, flare, or closed container.

"Conveyorized Degreasing": The continuous process of cleaning and removing soils from surfaces utilizing either cold or vaporized solvents.

"Crude Oil": A naturally occurring mixture which consisits of hydrocarbons and sulfur, nitrogen or oxygen derivatives of hydrocarbons and which is a liquid at standard conditions.

"Crude Oil Gathering": The transportation of crude oil or condensate after custody transfer between a production facility and a reception point.

"Custody Transfer": The transfer of produced petroleum and/or condensate after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

"Cutback Asphalt": Any asphalt which has been liquified by blending with petroleum solvents other than residual fuel oil and has not been emulsified with water.

"Degreaser": Any equipment or system used in solvent cleaning.

"Delivery Vessel": Any tank truck or trailer equipped with a storage tank that is used for the transport of gasoline to a stationary storage tank at a gasoline dispensing facility, bulk gasoline plant or bulk gasoline terminal.

"Distillate Fuel Oil": Fuel oils of grade No. 1 or 2 as specified in detailed requirements for fuel oil A.S.T.M. D-369-69 (1971).

"Dry Cleaning Facility": A facility engaged in the cleaning of fabrics using an essentially nonaqueous solvent by means of one or more solvent washes, extraction of excess solvent by spinning and drying by tumbling in an airstream. The facility includes, but is not limited to, washers, dryers, filter and purification systems, waste disposal systems, holding tanks, pumps and attendant piping and valves.

"Dump-Pit Area": Any area where grain is received at a grain-handling or grain-drying operation.

"Effective Grate Area": That area of a dump-pit grate through which air passes, or would pass, when aspirated.

"Effluent Water Separator": Any tank, box, sump or other apparatus in which any organic material floating on or entrained or contained in water entering such tank, box, sump or other apparatus is physically separated and removed from such water prior to outfall, drainage or recovery of such water.

"Emission Rate": Total quantity of any air contaminant discharge into the atmosphere in any one-hour period.

"End Sealing Compound Coat": A compound applied to can ends which functions as a gasket when the end is assembled on the can.

"Excess Air": Air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel and/or combustible waste material.

"Excessive Release": A discharge of more than 295g (0.65 pounds) of mercaptans and/or hydrogen sulfide into the atmosphere in any five minute period.

"Existing Grain-Drying Operation": Any grain-drying operation the construction or modification of which was commenced prior to June 30, 1975.

"Existing Grain-Handling Operation": Any grain-handling operation the construction or modification of which was commenced prior to June 30, 1975.

"Exterior Base Coat": An initial coating applied to the exterior of a can after the can body has been formed.

"Exterior End Coat": A coating applied by rollers or spraying to the exterior end of a can.

"External Floating Roof": A storage vessel cover in an open top tank consisting of a double deck or pontoon single deck which is supported by the petroleum liquid being contained and is equipped with a closure seal between the deck edge and tank wall.

"Extreme Performance Coating": Coatings designed for exposure to any of the following: the ambient weather conditions, temperatures above 368.15° K (203° F), detergents, abrasive and scouring agents, solvents, corrosive atmospheres, or other similar extreme environmental conditions.

"Fabric Coating": The coating of a textile substrate, including operations where the coating impregnates the substrate.

"Final Repair Coat": The repainting of any coating which is damaged during vehicle assembly.

"Firebox": The chamber or compartment of a boiler or furnace in which materials are burned, but not the combustion chamber or afterburner of an incinerator.

"Flexographic Printing": The application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of elastomeric materials.

"Floating Roof": A roof on a stationary tank, reservoir or other container which moves vertically upon change in volume of the stored material.

"Freeboard Height": For open top vapor degreasers, the distance from the top of the vapor zone to the top of the degreaser tank. For cold cleaning degreasers, the distance from the solvent to the top of the degreaser tank.

"Fuel Combustion Emission Source": Any furnace, boiler or similar equipment used for the primary purpose of producing heat or power by indirect heat transfer.

"Fuel Gas System": A system for collection of refinery fuel gas including, but not limited to, piping for collecting tail gas from various process units, mixing drums and controls and distribution piping.

"Fugitive Particulate Matter": Any particulate matter emitted into the atmosphere other than through a stack, provided that nothing in this definition or in 35 Ill. Adm. Code 212.Subpart K shall exempt any source from compliance with other provisions of 35 Ill. Adm. Code 212 otherwise applicable merely because of the absence of a stack.

"Gas Service": Means that the component contains process fluid that is in the gaseous state at operating conditions.

"Gasoline": Any petroleum distillate having a Reid vapor pressure of 4 pounds or greater.

"Gasoline Dispensing Facility": Any site where gasoline is transferred from a stationary storage tank to a motor vehicle gasoline tank used to provide fuel to the engine of that motor vehicle.

"Grain": The whole kernel or seed of corn, wheat, oats, soybeans and any other cereal or oil seed plant; and the normal fines, dust and foreign matter which results from harvesting, handling or conditioning. The grain shall be unaltered by grinding or processing.

"Grain-Drying Operation": Any operation, excluding aeration, by which moisture is removed from grain and which typically uses forced ventilation with the addition of heat.

"Grain-Handling and Conditioning Operation": A grain storage facility and its associate grain transfer, cleaning, drying, grinding and mixing operations.

"Grain-Handling Operation": Any operation where one or more of the following grain-related processes (other than grain-drying operation, portable grain-handling equipment, one-turn storage space, and excluding flour mills and feed mills) are performed: receiving, shipping, transferring, storing, mixing or treating of grain or other processes pursuant to normal grain operations.

"Green Tire Spraying": The spraying of green tires, both inside and outside, with release compounds which help remove air from the tire during molding and prevent the tire from sticking to the mold after curing.

"Green Tires": Assembled tires before molding and curing have occurred.

"Gross Heating Value": Amount of heat produced when a unit quantity of fuel is burned to carbon dioxide and water vapor, and the water vapor condensed as descibed in A.S.T.M. D-2015-66, D-900-55, D-1826-64 and D-240-64.

"Heavy Liquid": Liquid with a true vapor pressure of less than 0.3 kPa (0.04 psi) at 294.3° K (70° F) or 0.1 Reid Vapor Pressure as determined by A.S.T.M. method D-323; or which when distilled requires a temperature of 300° F or greater to recover 10% of the liquid as determined by A.S.T.M. method D-86.

"Heavy Metals": For the purposes of Section 9.4 of the Act, elemental, ionic, or combined forms of arsenic, cadmium, mercury, chromium, nickel and lead.

"Heavy, Off-Highway Vehicle Products": For the purposes of Section 215.204(k), heavy off-highway vehicle products shall include: heavy construction, mining,

farming or material handling equipment; heavy industrial engines; diesel-electric locomotives and associated power generation equipment; and the components of such equipment or engines.

"Hot Well": The reservoir of a condensing unit receiving the condensate from a barometric condenser.

"Housekeeping Practices": Those activities specifically defined in the list of housekeeping practices developed by the Joint EPA - Industry Task Force and included herein under 35 Ill. Adm. Code 212.461.

"Incinerator": Combustion apparatus in which refuse is burned.

"Indirect Heat Transfer": Transfer of heat in such a way that the source of heat does not come into direct contact with process materials.

"In-Process Tank": A container used for mixing, blending, heating, reacting, holding, crystallizing, evaporating, or cleaning operations in the manufacture of pharmaceuticals.

"In-situ Sampling Systems": Nonextractive samplers or in-line samplers.

"Interior Body Spray Coat": A coating applied by spray to the interior of a can after the can body has been formed.

"Internal Transferring Area": Areas and associated equipment used for conveying grain among the various grain operations.

"Large Appliance Coating": The application of a coating material to the component metal parts (including but not limited to doors, cases, lids, panels and interior support parts) of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners and other similar products.

"Light-Duty Truck": Any second division motor vehicle, as that term is defined in the Illinois Vehicle Code, (Ill. Rev. Stat. 1987, ch. 95½, pars. 1-100 et seq.) weighing less than 3854 kilograms (8500 pounds) gross.

"Liquid-Mounted Seal": A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof edge around the circumference of the roof.

"Liquid Service": Means that the equipment or component contains process fluid that is in a liquid state at operating conditions.

"Liquids Dripping": Any visible leaking from a seal including spraying, misting, clouding and ice formation.

"Load-Out Area": Any area where grain is transferred from the grain-handling operation to any vehicle for shipment or delivery.

"Low Solvent Coating": A coating which contains less organic solvent than the conventional coatings used by the industry. Low solvent coatings include water-borne, higher solids, electro-deposition and powder coatings.

"Magnet Wire Coating": The application of a coating of electrically insulating varnish or enamel to conducting wire to be used in electrical machinery.

"Major Dump Pit": Any dump pit with an annual grain through-put of more than 300,000 bushels, or which receives more than 40% of the annual grain through-put of the grain-handling operation.

"Major Metropolitan Area (MMA)": Any county or group of counties which is defined by the following Table:

MAJOR METROPOLITAN AREAS IN ILLINOIS (MMA's)

MMA	COUNTIES INCLUDED IN MMA
Champaign-Urbana	Champaign
Chicago	Cook, Lake, Will, DuPage, McHenry, Kane, Grundy, Kendall, Kankakee
Decatur	Macon
Peoria	Peoria, Tazewell
Rockford	Winnebago
Rock Island -- Moline	Rock Island
Springfield	Sangamon
St. Louis (Illinois)	St. Clair, Madison
Bloomlington -- Normal	McLean

"Major Population Area (MPA)": Areas of major population concentration in Illinois, as described below:

The area within the counties of Cook; Lake; DuPage; Will; the townships of Burton, Richmond, McHenry, Greenwood, Nunda, Door, Algonquin, Grafton and the

municipality of Woodstock, plus a zone extending two miles beyond the boundary of said municipality located in McHenry County; the townships of Dundee, Rutland, Elgin, Plato, St. Charles, Campton, Geneva, Blackberry, Batavia, Sugar Creek and Aurora located in Kane County; and the municipalities of Kankakee, Bradley and Bourbonnais, plus a zone extending two miles beyond the boundaries of said municipalities in Kankakee County.

The area within the municipalities of Rockford and Loves Park, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Rock Island, Moline, East Moline, Carbon Cliff, Milan, Oak Grove, Silvis, Hampton, Greenwood and Coal Valley, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Galesburg and East Galesburg, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Bartonville, Peoria and Peoria Heights, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Pekin, North Pekin, Marquette Heights, Creve Coeur and East Peoria, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Bloomington and Normal, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Champaign, Urbana and Savoy, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Decatur, Mt. Zion, Harristown and Forsyth, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the municipalities of Springfield, Leland Grove, Jerome, Southern View, Grandview, Sherman and Chatham, plus a zone extending two miles beyond the boundaries of said municipalities.

The area within the townships of Godfrey, Foster, Wood River, Fort Russell, Chouteau, Edwardsville, Venice, Nameoki, Alton, Granite City and Collinsville located in Madison County; and the townships of Stites, Canteen, Centreville, Caseyville, St. Clair, Sugar Loaf and Stookey located in St. Clair County.

"Manufacturing Process": A process emission source or series of process emission sources used to convert raw materials, feed stocks, subassemblies or other components into a product, either for sale or for use as a component in a subsequent manufacturing process.

"Metal Furniture Coating": The application of a coating material to any furniture piece made of metal or any metal part which is or will be assembled with other metal, wood, fabric, plastic or glass parts to form a furniture piece including, but not limited to, tables, chairs, wastebaskets, beds, desks, lockers, benches, shelving, file cabinets, lamps and room dividers. This definition shall not apply to any coating line coating metal parts or products that is identified under the Standard Industrial Classification Code for Major Groups 33, 34, 35, 36, 37, 38, 39, 40 or 41.

"Miscellaneous Fabricated Product Manufacturing Process":

A manufacturing process involving one or more of the following applications, including any drying and curing of formulations, and capable of emitting volatile organic material:

Adhesives to fabricate or assemble non-furniture components or products

Asphalt solutions to paper or fiberboard

Asphalt to paper or felt

Coatings or dye to leather

Coatings to plastic

Coatings to rubber or glass

Curing of furniture adhesives in an oven which would emit in excess of 10 tons of volatile organic material per year if no air pollution control equipment were used

Disinfectant material to manufactured items

Plastic foam scrap or "fluff" from the manufacture of foam containers and packaging material to form resin pellets

Resin solutions to fiber substances

Rubber solutions to molds

Viscose solutions for food casings

The storage and handling of formulations associated with the process described above.

The use and handling of organic liquids and other substances for clean-up operations associated with the process described above.

"Miscellaneous Formulation Manufacturing Process":

A manufacturing process which compounds one or more of the following and is capable of emitting volatile organic material:

Adhesives

Asphalt solutions

Caulks, sealants or waterproofing agents

Coatings, other than paint and ink

Concrete curing compounds

Dyes

Friction materials and compounds

Resin solutions

Rubber solutions

Viscose solutions

The storage and handling of formulations associated with the process described above.

The use and handling of organic liquids and other substances for clean-up operations associated with the process described above.

"Miscellaneous Metal Parts and Products": For the purpose of 35 Ill. Adm. Code 215.204, miscellaneous metal parts and products shall include farm machinery, garden machinery, small appliances, commercial machinery, industrial machinery, fabricated metal products and any other industrial category which coats metal parts or products under the Standard Industrial Classification Code for Major Groups 33, 34, 35, 36, 37, 38 or 39 with the exception of the following: coating lines subject to 35 Ill. Adm. Code 215.204(a)-(i) and (k), automobile or light-duty truck refinishing, the exterior of marine vessels and the customized top coating of automobiles and trucks if production is less than thirty-five vehicles per day.

"Miscellaneous Organic Chemical Manufacturing Process":

A manufacturing process which produces by chemical reaction, one or more of the following organic compounds or mixtures of organic compounds and which is capable of emitting volatile organic materials:

Chemicals listed in 35 Ill. Adm. Code 215. Appendix D.

Chlorinated and sulfonated compounds

Cosmetic, detergent, soap or surfactant intermediaries or specialties and products

Disinfectants

Food additives

Oil and petroleum product additives

Plasticizers

Resins or polymers

Rubber additives

Sweeteners

Varnishes

The storage and handling of formulations associated with the process described above.

The use and handling of organic liquids and other substances for clean-up operations associated with the process described above.

"Mixing Operation": The operation of combining two or more ingredients, of which at least one is a grain.

"New Grain-Drying Operation": Any grain-drying operation the construction or modification of which is commenced on or after June 30, 1975.

"New Grain-Handling Operation": Any grain-handling operation the construction of modification of which is commenced on or after June 30, 1975.

"No Detectable Volatile Organic Material Emissions": A discharge of volatile organic material into the atmosphere as indicated by an instrument reading of less than 500 ppm above background as determined in accordance with 40 CFR 60.485(c).

"One Hundred Percent Acid": Acid with a specific gravity of 1.8205 at 30° C in the case of sulfuric acid and 1.4952 at 30° C in the case of nitric acid.

"One-Turn Storage Space": That space used to store grain with a total annual through-put not in excess of the total bushel storage of that space.

"Opacity": A condition which renders material partially or wholly impervious to transmittance of light and causes obstruction of an observer's view. For the purposes of these regulations, the following equivalence between opacity and Ringelmann shall be employed:

Opacity Percent	Ringelmann
10	0.5
20	1.
30	1.5
40	2.
60	3.
80	4.
100	5.

"Open Top Vapor Degreasing": The batch process of cleaning and removing soils from surfaces by condensing hot solvent vapor on the colder metal parts.

"Operator of Gasoline Dispensing Facility": Any person who is the lessee of or operates, controls or supervises a gasoline dispensing facility.

"Organic Material": Any chemical compound of carbon including diluents and thinners which are liquids at standard conditions and which are used as dissolvers,

viscosity reducers or cleaning agents, but excluding methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbonic acid, metallic carbide, metallic carbonates and ammonium carbonate.

"Organic Materials": For the purposes of Section 9.4 of the Act, any chemical compound of carbon including diluents and thinners which are liquids at standard conditions and which are used as dissolvers, viscosity reducers or cleaning agents, and polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans and polynuclear aromatic hydrocarbons are organic materials, while methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbonic acid, metallic carbide, metallic carbonates and ammoniun carbonate are not organic materials.

"Organic Vapor": Gaseous phase of an organic material or a mixture of organic materials present in the atmosphere.

"Overvarnish": A coating applied directly over ink or printing.

"Owner of Gasoline Dispensing Facility": Any person who has legal or equitable title to a stationary storage tank at a gasoline dispensing facility.

"Packaging Rotogravure Printing": Rotogravure printing upon paper, paper board, metal foil, plastic film and other substrates, which are, in subsequent operations, formed into packaging products or labels for articles to be sold.

"Paint Manufacturing Plant": A plant that mixes, blends, or compounds enamels, lacquers, sealers, shellacs, stains, varnishes or pigmented surface coatings.

"Paper Coating": The application of a coating material to paper or pressure sensitive tapes, regardless of substrate, including web coating on plastic fibers and decorative coatings on metal foil.

"Particulate Matter": Any solid or liquid material, other than water, which exists in finely divided form.

"Petroleum Liquid": Crude oil, condensate or any finished or intermediate product manufactured at a petroleum refinery, but not including Number 2 through

Number 6 fuel oils as specified in A.S.T.M. D-396-69, gas turbine fuel oils Numbers 2-GT through 4-GT as specified in A.S.T.M. D-2880-71 or diesel fuel oils Numbers 2-D and 4-D, as specified in A.S.T.M. D-975-68.

"Petroleum Refinery": Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation, cracking, extraction or reforming of unfinished petroleum derivatives.

"Pharmaceutical": Any compound or mixture, other than food, used in the prevention, diagnosis, alleviation, treatment or cure of disease in man and animal.

"Photochemically Reactive Material": Any organic material with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or the composition of which exceeds any of the following individual percentage composition limitations. Whenever any photochemically reactive material or any constituent of any organic material may be classified from its chemical structure into more than one of the above groups of organic materials it shall be considered as a member of the most reactive group, that is, the group having the least allowable percent of the total organic materials.

A combination of hydrocarbons, alcohols, aldehydes, esters, ethers or ketones having an olefinic or cyclo-olefinic types of unsaturation: 5 percent. This definition does not apply to perchlorethylene or trichloroethylene.

A combination of aromatic compounds with eight or more carbon atoms to the molecule except ethylbenzene: 8 percent.

A combination of ethylbenzene, ketones having branched hydrocarbon structures or toluene: 20 percent.

"Pneumatic Rubber Tire Manufacture": The production of pneumatic rubber tires with a bead diameter up to but not including 20.0 inches and cross section dimension up to 12.8 inches, but not including specialty tires for antique or other vehicles when produced on equipment separate from normal production lines for passenger or truck type tires.

"Polybasic Organic Acid Partial Oxidation Manufacturing Process": Any process involving partial oxidation of

hydrocarbons with air to manufacture polybasic acids or their anhydrides, such as maleic anhydride, phthalic anhydride, terephthalic acid, isophthalic acid, trimelletic anhydride.

"Portable Grain-Handling Equipment": Any equipment (excluding portable grain dryers) that is designed and maintained to be movable primarily for use in a non-continuous operation for loading and unloading one-turn storage space, and is not physically connected to the grain elevator, provided that the manufacturer's rated capacity of the equipment does not exceed 10,000 bushels per hour.

"Portland Cement Process": Any facility manufacturing portland cement by either the wet or dry process.

"Power Driven Fastener Coating": The coating of nail, staple, brad and finish nail fasteners where such fasteners are fabricated from wire or rod of 0.0254 inch diameter or greater, where such fasteners are bonded into coils or strips, such coils and strips containing a number of such fasteners, which fasteners are manufactured for use in power tools, and which fasteners must conform with formal standards for specific uses established by various federal and national organizations including Federal Specification FF-N-105b of the General Services Administration dated August 23, 1977 (does not include any later amendments or editions; U.S. Army Armament Research and Development Command, Attn: DRDAR-TST, Rock Island, IL 61201), Bulletin UM-25d of the U.S. Department of Housing and Urban Development - Federal Housing Administration dated September 5, 1973 (does not include any later amendments or editions; Department of HUD, 547 W. Jackson Blvd., Room 1005, Chicago, IL 60606), and the Model Building Code of the Council of American Building Officials, and similar standards. For the purposes of this definition, the terms "brad" and "finish nail" refer to single leg fasteners fabricated in the same manner as staples. The application of coatings to staple, brad, and finish nail fasteners may be associated with the incremental forming of such fasteners in a cyclic or repetitious manner (incremental fabrication) or with the forming of strips of such fasteners as a unit from a band of wires (unit fabrication).

"PPM (Vol) - (Parts per Million) (Volume)": A volume/volume ratio which expresses the volumetric concentration of gaseous air contaminant in a million unit volumes of gas.

"Pressure Release": The emission of materials resulting from system pressure being greater than set pressure of the pressure relief device.

"Pressure Tank": A tank in which fluids are stored at a pressure greater than atmospheric pressure.

"Prime Coat": The first film of coating material applied in a multiple coat operation.

"Prime Surfacer Coat": A film of coating material that touches up areas on the surface not adequately covered by the prime coat before application of the top coat.

"Process": Any stationary emission source other than a fuel combustion emission source or an incinerator.

"Process Unit": Components assembled to produce, as intermediate or final products, one or more of the chemicals listed in 35 Ill. Adm. Code 215.Appendix D. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

"Process Unit Shutdown": A work practice or operational procedure that stops production from a process unit or part of a process unit. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. The use of spare components and technically feasible bypassing of components without stopping production is not a process unit shutdown.

"Process Weight Rate": The actual weight or engineering approximation thereof of all materials except liquid and gaseous fuels and combustion air, introduced into any process per hour. For a cyclical or batch operation, the process weight rate shall be determined by dividing such actual weight or engineering approximation thereof by the number of hours of operation excluding any time during which the equipment is idle. For continuous processes, the process weight rate shall be determined by dividing such actual weight or engineering approximation thereof by the number of hours in one complete operation, excluding any time during which the equipment is idle.

"Production Equipment Exhaust System": A system for collecting and directing into the atmosphere emissions of volatile organic material from reactors, centrifuges and other process emission sources.

"Publication Rotogravure Printing": Rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements or other types of non-packaging printed materials.

"Purged Process Fluid": Liquid or vapor from a process unit that contains volatile organic material and that results from flushing or cleaning the sample line(s) of a process unit so that an uncontaminated sample may then be taken for testing or analysis.

"Reactor": A vat, vessel or other device in which chemical reactions take place.

"Reasonably Available Control Technology (RACT)": The lowest emission limitation that an emission source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

"Refinery Fuel Gas": Any gas which is generated by a petroleum refinery process unit and which is combusted at the refinery, including any gaseous mixture of natural gas and fuel gas.

"Refinery Unit, Process Unit or Unit": A set of components which are a part of a basic process operation such as distillation, hydrotreating, cracking or reforming of hydrocarbons.

"Residual Fuel Oil": Fuel oils of grade No. 4, 5 and 6 as specified in detailed requirements for fuel oils A.S.T.M. D-396-69 (1971).

"Restricted Area": The area within the boundaries of any "municipality" as defined in the Illinois Municipal Code, plus a zone extending one mile beyond the boundaries of any such municipality having a population of 1000 or more according to the latest federal census.

"Ringelmann Chart": The chart published and described in the Bureau of Mines, U.S. Department of Interior, Information Circular 8333 (Revision of IC7718) May 1, 1967, or any adaptation thereof which has been approved by the Agency.

"Roadway": Any street, highway, road, alley, sidewalk, parking lot, airport, rail bed or terminal, bikeway, pedestrian mall or other structure used for transportation purposes.

"Roll Printing": The application of words, designs and pictures to a substrate usually by means of a series of hard rubber or metal rolls each with only partial coverage.

"Rotogravure Printing": The application of words, designs and pictures to a substrate by means of a roll printing technique in which the pattern to be applied is recessed relative to the non-image area.

"Safety Relief Valve": A valve which is normally closed and which is designed to open in order to relieve excessive pressures within a vessel or pipe.

"Sandblasting": The use of a mixture of sand and air at high pressures for cleaning and/or polishing any type of surface.

"Sensor": A device that measures a physical quantity or the change in a physical quantity such as temperature, pressure, flow rate, pH, or liquid level.

"Set of Safety Relief Valves": One or more safety relief valves designed to open in order to relieve excessive pressures in the same vessel or pipe.

"Sheet Basecoat": A coating applied to metal when the metal is in sheet form to serve as either the exterior or interior of a can for either two-piece or three-piece cans.

"Shotblasting": The use of a mixture of any metallic or non-metallic substance and air at high pressures for cleaning and/or polishing any type of surface.

"Side-Seam Spray Coat": A coating applied to the seam of a three-piece can.

"Smoke": Small gas-borne particles resulting from incomplete combustion, consisting predominately but not exclusively of carbon, ash and other combustible material, that form a visible plume in the air.

"Smokeless Flare": A combustion unit and the stack to which it is affixed in which organic material achieves combustion by burning in the atmosphere such that the smoke or other particulate matter emitted to the atmosphere from such combustion does not have an appearance density or shade darker that No. 1 of the Ringlemann Chart.

"Solvent Cleaning": The process of cleaning soils from surfaces by cold cleaning, open top vapor degreasing or conveyorized degreasing.

"Specialty High Gloss Catalyzed Coating": Commercial contract finishing of material prepared for printers and lithographers where the finishing process uses a solvent-borne coating, formulated with a catalyst, in a quantity of no more than 12,000 gallons/year as supplied, where the coating machines are sheet fed and the coated sheets are brought to a minimum surface temperature of 190^{O} F, and where the coated sheets are to achieve the minimum specular reflectance index of 65 measured at a 60 degree angle with a gloss meter.

"Splash Loading": A method of loading a tank, railroad tank car, tank truck or trailer by use of other than a submerged loading pipe.

"Stack": A flue or conduit, free-standing or with exhaust port above the roof of the building on which it is mounted, by which air contaminants are emitted into the atmosphere.

"Standard Conditions": A temperature of 70^{O} F and a pressure of 14.7 pounds per square inch absolute (psia).

"Standard Cubic Foot (scf)": The volume of one cubic foot of gas at standard conditions.

"Startup": The setting in operation of an emission source for any purpose.

"Stationary Emission Source": An emission source which is not self-propelled.

"Stationary Storage Tank": Any container of liquid or gas which is designed and constructed to remain at one site.

"Submerged Loading Pipe": Any loading pipe the discharge opening of which is entirely submerged when the liquid level is 6 inches above the bottom of the tank. When applied to a tank which is loaded from the side, any loading pipe the discharge of which is entirely submerged when the liquid level is 18 inches or two times the loading pipe diameter, whichever is greater, above the bottom of the tank. The definition shall also apply to any loading pipe which is continuously submerged during loading operations.

"Sulfuric Acid Mist": Sulfuric acid mist as measured according to the method specified in 35 Ill. Adm. Code 214.101(b).

"Surface Condenser": A device which removes a substance from a gas stream by reducing the temperature of the stream, without direct contact between the coolant and the stream.

"Synthetic Organic Chemical or Polymer Manufacturing Plant": A plant that produces, as intermediates or final products, one or more of the chemicals or polymers listed in 35 Ill. Adm. Code 215.Appendix D.

"Top Coat": A film of coating material applied in a multiple coat operation other than the prime coat, final repair coat or prime surfacer coat.

"Transfer Efficiency": ~~the weight or volume~~ ratio of the amount of coating ~~adhering to the material being coated divided by the weight or volume~~ deposited onto a part or product to the total amount of coating solids ~~delivered to the coating applicator and multiplied by 100 to equal a percentage~~ used.

"Tread End Cementing": The application of a solvent-based cement to the tire tread ends.

"True Vapor Pressure": The equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss From Floating Roof Tanks" (1962).

"Turnaround": The procedure of shutting down an operating refinery unit, emptying gaseous and liquid contents to do inspection, maintenance and repair work, and putting the unit back into production.

"Undertread Cementing": The application of a solvent-based cement to the underside of a tire tread.

"Unregulated Safety Relief Valve": A safety relief valve which cannot be actuated by a means other than high pressure in the pipe or vessel which it protects.

"Vacuum Producing System": Any reciprocating, rotary or centrifugal blower or compressor, or any jet ejector or device that creates suction from a pressure below atmospheric and discharges against a greater pressure.

"Valves Not Externally Regulated": Valves that have no external controls, such as in-line check valves.

"Vapor Balance System": Any combination of pipes or hoses which creates a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

"Vapor Collection System": All piping, seals, hoses, connections, pressure-vacuum vents, and other possible sources between the gasoline delivery vessel and the vapor processing unit and/or the storage tanks and vapor holder.

"Vapor Control System": Any system that prevents release to the atmosphere of organic material in the vapors displaced from a tank during the transfer of gasoline.

"Vapor-Mounted Primary Seal": A primary seal mounted with an air space bounded by the bottom of the primary seal, the tank wall, the liquid surface and the floating roof.

"Vinyl Coating": The application of a topcoat or printing to vinyl coated fabric or vinyl sheets; provided, however, that the application of an organisol or plastisol is not vinyl coating.

"Volatile Organic Liquid": Any liquid which contains volatile organic material.

"Volatile Organic Material" or "Volatile Organic Material Content (VOMC)": the emissions of volatile organic material which would result from the exposure of a coating, printing ink, fountain solution, tire spray, dry cleaning waste or other similar material to the air, including any drying or curing, in the absence of any control equipment. VOMC is typically expressed as killogram (kg) VOM/liter (lb VOM/gallon) of coating or coating solids, or Kg VOM/Kg (lb VOM/lb) of coating material.

Any organic material which participates in atmospheric photochemical reactions unless specifically exempted from this definition. Volatile organic material emissions shall be measured by the reference methods specified under 40 CFR 60, Appendix A (1986) (no future amendments or editions are included), or, if no reference method is applicable, may be determined by mass balance calculations.

For purposes of this definition, the following are not volatile organic materials:

Chlorodifluoroethane (HCFC-142b)
Chlorodifluoromethane (CFC-22)
Chloropentafluoroethane (CFC-115)
Dichlorodifluoromethane (CFC-12)
Dichlorofluorethane (HCFC-141b)
Dichlorotetrafluoroethane (CFC-114)
Dichlorotrifluoroethane (HCFC-123)
Ethane
Methane
Dichloromethane (Methylene chloride)
Tetrafluoroethane (HFC-134a)
1,1,1, Trichloroethane (Methyl chloroform)
Trichlorofluoromethane (CFC-11)
Trichlorotrifluoroethane (CFC-113)
Trifluoromethane (FC-23)

"Volatile Petroleum Liquid": Any petroleum liquid with a true vapor pressure that is greater than 1.5 psia (78 millimeters of mercury) at standard conditions.

"Wastewater (Oil/Water) Separator": Any device or piece of equipment which utilizes the difference in density between oil and water to remove oil and associated chemicals of water, or any device, such as a flocculation tank or a clarifier, which removes petroleum derived compounds from waste water.

"Weak Nitric Acid Manufacturing Process": Any acid producing facility manufacturing nitric acid with a concentration of less than 70 percent by weight.

"Woodworking": The shaping, sawing, grinding, smoothing, polishing and making into products of any form or shape of wood.

(Source: Amended at __ Ill. Reg. _____, effective _____)

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE B: AIR POLLUTION
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER c: EMISSIONS STANDARDS AND LIMITATIONS FOR STATIONARY SOURCES

PART 215
ORGANIC MATERIAL EMISSION STANDARDS AND LIMITATIONS

SUBPART A: GENERAL PROVISIONS

SUBPART B: ORGANIC EMISSIONS FROM STORAGE AND LOADING OPERATIONS

SUBPART C: ORGANIC EMISSIONS FROM MISCELLANEOUS EQUIPMENT

SUBPART E: SOLVENT CLEANING

SUBPART F: COATING OPERATIONS

SUBPART P: PRINTING AND PUBLISHING

SUBPART Q: LEAKS FROM SYNTHETIC ORGANIC CHEMICAL AND POLYMER MANUFACTURING EQUIPMENT

SUBPART R: PETROLEUM REFINING AND RELATED INDUSTRIES; ASPHALT MATERIALS

SUBPART S: RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS

SUBPART T: PHARMACEUTICAL MANUFACTURING

SUBPART U: COKE MANUFACTURING AND BY-PRODUCT RECOVERY

SUBPART V: AIR OXIDATION PROCESSES

SUBPART W: AGRICULTURE

SUBPART X: CONSTRUCTION

SUBPART Y: GASOLINE DISTRIBUTION

SUBPART Z: DRY CLEANERS

SUBPART AA: PAINT AND INK MANUFACTURING

AUTHORITY: Implementing Section 10 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111½ pars. 1010 and 1027).

SOURCE: Adopted as Chapter 2: Air Pollution, Rule 205: Organic Material Emission Standards and Limitations, R71-23, 4 PCB 191, filed and effective April 14, 1972; amended in R77-3, 33 PCB 357, at 3 Ill. Reg. 18, p. 41, effective May 3, 1979; amended in R78-3 and R78-4, 35 PCB 75, at 3 Ill. Reg. 30, p. 124, effective July 28, 1979; amended in R80-5 at 7 Ill. Reg. 1244, effective January 21, 1983; codified at 7 Ill. Reg. 13601; Notice of Corrections at 7 Ill. Reg. 14575; amended in R82-14 at 8 Ill. Reg. 13254, effective July 12, 1984; amended in R83-36 at 9 Ill. Reg. 9114, effective May 30, 1985; amended in R82-14 at 9 Ill. Reg. 13960, effective August 28, 1985; amended in R85-28 at 11 Ill. Reg. 3127, effective February 3, 1987; amended in R82-14 at 11 Ill. Reg. 7296, effective April 3, 1987; amended in R85-21(A) at 11 Ill. Reg. 11770, effective June 29, 1987; recodified in R86-39 at 11 Ill. Reg. 13541; amended in R82-14 and R86-12 at 11 Ill. Reg. 16706, effective September 30, 1987; amended in R85-21(B) at 11 Ill. Reg. 19117, effective November 9, 1987; amended in R86-36, R86-39, R86-40 at 11 Ill. Reg. 20829, effective December 14, 1987; amended in R82-14 and R86-37 at 12 Ill. Reg. 815, effective December 24, 1987; amended in R86-18 at 12 Ill. Reg. 7311, effective April 8, 1988; amended in R86-10 at 12 Ill. Reg. 7650, effective April 11, 1988; amended in R88-23 at 13 Ill. Reg. 10893, effective June 27, 1989; amended in R88-30(A) at 14 Ill. Reg. 3555, effective February 27, 1990; amended in R89-16 at ____ Ill. Reg. _____, effective _____.

Section 215.102 Testing Methods

~~a) The total organic material concentrations in an effluent stream shall be measured by a flame ionization detector, or by other methods approved by the Illinois Environmental Protection Agency (Agency) according to the provisions of 35 Ill. Adm. Code 201.~~

a) Volatile organic material or organic material concentrations in a stream is measured by Method 18, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105, Measurement of Gaseous Organic Compounds incorporated by reference in 215.105 except as follows. ASTM D-4457, incorporated by reference in Section 215.105, may be used for halogenated organic compounds. Method 25, 25A or 25B, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105 may be substituted for Method 18 provided the source owner or operator submits calibration data and other proof that this method provides the information in the emission units of the applicable standard. The volumetric flow rate and gas velocity is determined in accordance with

Methods 1, 1A, 2, 2A, 2C, 2D, 3 and 4, 40 CFR Part 60, Appendix A, incorporated by reference in 215.105. Any other alternate test method must be approved by the Agency, which shall consider data comparing the performance of the proposed alternative to the performance of the approved test method(s). If the Agency determines that such data demonstrates that the proposed alternative will achieve results equivalent to the approved test method(s), the Agency shall approve the proposed alternative.

b) Measurement of Vapor Pressures

1) For a single-component, the actual vapor pressure shall be determined by ASTM (American Society of Testing and Materials) Method D-2789-83 (Approved 1983), incorporated by reference in Section 215.105, or the vapor pressure may be obtained from a published source such as: Boublik, T., V. Fried and E. Hala, "The Vapor Pressure of Pure Substances," Elsevier Scientific Publishing Co., New York (1973), Perry's Chemical Engineer's Handbook, McGraw-Hill Book Company (1984), CRC Handbook of Chemistry and Physics, Chemical Rubber Publishing Company (1986-1987), Lange's Handbook of Chemistry, John A. Dean, editor, McGraw-Hill Book Company (1985).

2) For a mixture, the actual vapor pressure shall be determined by ASTM Method D-2879-83 (Approved 1983), incorporated by reference in Section 215.105, or the vapor pressure may be taken as either:

A) If the vapor pressure of the volatile organic liquid is specified in the applicable rule, the lesser of the sum of the actual vapor pressure of each component or each volatile organic material component, as determined in accordance with subsection 215.102(b)(1), weighted by its mole fraction; or

B) If the vapor pressure of the organic material or volatile organic material is specified in the applicable rule, the sum of the actual vapor pressure of each such component as determined in accordance with Section 215.102(b)(1) weighted by its mole fraction.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.105 Incorporation by Reference

The following materials are incorporated by reference:

a) American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103:

1) ASTM D 1644-59 Method A

2) ASTM D 1475-60

3) ASTM D 2369-~~73~~81

4) ASTM D 2879-83 (Approved 1983)

5) ASTM D 323-82 (Approved 1982)

6) ASTM D 86-82 (Approved 1982)

7) ASTM E 260-73 (Approved 1973), E 168-67 (Reapprcved 1977), E 169-63 (Reapproved 1981), E 20 (Approved 1985)

8) ASTM D 97-66

9) ASTM D 1946-67

10) ASTM D 2382-76

11) ASTM D 2504-83

12) ASTM D 2382-83

13) ASTM D 4057-81 (Approved 1981)

14) ASTM D 4177-82 (Approved 1982)

15) ASTM D 4953-89

16) ASTM D-4457-85

b) Federal Standard 141a, Method 4082.1.

c) National Fire Codes, National Fire Prevention Association, Battery March Park, Quincy, Massachusetts 02269 (1979).

d) United States Environmental Protection Agency, Washington, D.C., EPA-450/2-77-026, Appendix A.

e) United States Environmental Protection Agency, Washington, D.C., EPA-450/2-78-051 Appendix A and Appendix B (December 1978).

f) Standard Industrial Classification Manual, published by Executive Office of the President, Office of Management and Budget, Washington, D.C., 1972

g) 40 CFR 60~~, Appendix A (1986)~~ (July 1, 1988).

h) United States Environmental Protection Agency, Washington D.C., EPA-450/2-78-041.

i) 40 CFR 80, Appendicies D, E, and F, adopted March 22, 1989 at 54 Fed. Reg. 11897.

(BOARD NOTE: The incorporations by reference listed above contain no later amendments or editions.)

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.122 Loading Operations

a) No person shall cause or allow the discharge of more than 3.6 kg/hr (8 lbs/hr) of organic material into the atmosphere during the loading of any organic material from the aggregate loading pipes of any loading facility having through-put of greater than 151 cubic meters per day (40,000 gal/day) into any railroad tank car, tank truck or trailer unless such loading facility is equipped with submerged loading pipes, submerged fill or a device that is equally effective in controlling emissions and is approved by the Agency according to the provisions of 35 Ill. Adm. Code 201.

b) No person shall cause or allow the loading of any organic material into any stationary tank having a storage capacity of greater than 946 l (250 gal), unless such tank is equipped with a permanent submerged loading pipe, submerged fill or an equivalent device approved by the Agency according to the provisions of 35 Ill. Adm. Code 201, or unless such tank is a pressure tank as described in Section 215.121(a) or is fitted with a recovery system as described in Section 215.121(b)(2).

c) Exception: If no odor nuisance exists the limitations of this Section shall only apply to the loading of volatile organic liquid with a vapor pressure of 17.24 kPa (2.5 psia) or greater at 294.3°K (70°F).

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.124 External Floating Roofs

a) In addition to meeting the requirements of Section 215.123(b), no owner or operator of a stationary storage tank equipped with an external floating roof shall cause or allow the storage of any volatile petroleum liquid in the tank unless:

1) The tank has been fitted with a continuous secondary seal extending from the floating roof to the tank wall (rim mounted secondary seal) or any other device which controls volatile organic material emissions with an effectiveness equal to or greater than a rim mounted secondary seal;

2) Each seal closure device meets the following requirements:

A) The seal is intact and uniformly in place around the circumference of the floating roof between the floating roof and tank wall; and

B) The accumulated area of gaps exceeding 0.32 centimeter (1/8 inch) in width between the secondary seal and the tank wall shall not exceed 21.2 square centimeters per meter of tank diameter (1.0 square inches per foot of tank diameter).~~, as determined by methods or procedures approved by the Agency;~~

3) Emergency roof drains are provided with slotted membrane fabric covers or equivalent covers across at least 90 percent of the area of the opening;

4) Openings are equipped with projections into the tank which remain below the liquid surface at all times;

5) Inspections are conducted prior to May 1 of each year to insure compliance with subsection 215.124(a);

6) The secondary seal gap is measured prior to May 1 of each year; ~~in accordance with methods or procedures approved by the Agency;~~

7) Records of the types of volatile petroleum liquid stored, the maximum true vapor pressure of the liquid as stored, the results of the inspections and the results of the secondary seal gap measurements are maintained and available to the Agency, upon verbal or written request, at any reasonable time for a minimum of two years after the date on which the record was made~~;~~.

~~8)~~ ~~Upon a reasonable request by the Agency, the owner or operator of a volatile organic material source required to comply with Section 215.124(a), at his own expense, demonstrates compliance by methods or procedures approved by the Agency; and~~

~~9)~~ ~~A person planning to conduct a volatile organic material emission test to demonstrate compliance with Sections 215.123 and 215.124 notifies the Agency of that intent not less than 30 days before the planned initiation of the tests so that the Agency may observe the test.~~

b) ~~The requirements of Section 215.124(a)~~ Subsection (a) ~~shall not~~ does not apply to any stationary storage tank equipped with an external floating roof:

1) Exempted under Section 215.123(a)(2) through 215.123(a)(6);

2) Of welded construction equipped with a metallic type shoe seal having a secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal);

3) Of welded construction equipped with a metallic type shoe seal, a liquid-mounted foam seal, a liquid-mounted liquid-filled-type seal, or other closure device of equivalent control efficiency approved by the Agency in which a petroleum liquid with a true vapor pressure less than 27.6 kPa (4.0 psia) at 294.3° K (70° F) is stored; or

4) Used to store crude oil.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.127 Emissions Testing

a) Any tests of organic material emissions, including tests conducted to determine control equipment efficiency, shall be conducted in accordance with the methods and procedures specified in Section 215.102.

b) Upon a reasonable request by the Agency, the owner or operator of an organic material emission source required to comply with this Subpart shall conduct emissions testing, at such person's own expense, to demonstrate compliance.

c) A person planning to conduct an organic material emission test to demonstrate compliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the Agency may observe the test.

(Source: Added at __ Ill. Reg. _____ effective _____)

Section 215.128 Measurement of Seal Gaps

a) Any measurements of secondary seal gaps shall be conducted in accordance with the methods and procedures specified in 40 CFR 60, Subpart Kb incorporated by reference in Section 215.105.

b) A person planning to conduct a measurement of seal gaps to demonstrate compliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned performance of the tests so the Agency may observe the test.

(Source Added at ___ Ill. Reg. _____ effective _____)

SUBPART E: SOLVENT CLEANING

Section 215.206 Exemptions from Emission Limitations

a) The limitations of this Subpart shall not apply to:

1) Coating plants whose emissions of volatile organic material as limited by the operating permit will not exceed 22.7 Mg/year (25 T/year), in the absence of air pollution control equipment; or

2) Sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided that:

A) The operation of the source is not an integral part of the production process;

B) The emissions from the source do not exceed 363 kg (800 lbs) in any calendar month; and

C) The exemption is approved in writing by the Agency.

~~3) Interior body spray coating material for three-piece steel cans used by National Can Corporation at its Rockford can manufacturing plant in Loves Park, Illinois, provided that:~~

A) The emission of volatile organic material from the interior body spray coating line shall not exceed 0.70 kg/l (5.8 lb/gal) of coating material, excluding water, delivered to the coating applicator; and

B) The emission of volatile organic material shall comply with the provisions of Section 215.204 by use of the internal offset provisions of Section 215.207 computed on a weekly weighted average basis.

b) The limitations of Section 215.204(j) shall not apply to the Waukegan, Illinois, facilities of the Outboard Marine Corporation, so long as the emissions of volatile organic material related to the surface coating of miscellaneous metal parts and products at those facilities do not exceed 35 tons per year.

c) Notwithstanding the limitations of Section 215.204(k)(2), the John Deere Harvester-Moline Works of Deere and Company, Moline, Illinois, shall not cause or permit the emission of volatile organic material from its existing green and yellow flocoating operations to exceed a weekly average of 6.2 lb/gal.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.208 Testing Methods for ~~Solvent~~ Volatile Organic Material Content

a) ~~The following methods of analyzing the solvent content of coatings, as revised from time to time, or any other equivalent procedure approved by the Agency, shall by sued as applicable:~~

~~1) ASTM D 1644 59 Method A~~

~~2) ASTM D 1475 60~~

~~3) ASTM D 2369 73~~

~~4) Federal Standard 141a, Method 4082.1~~

The VOM content of coatings shall be determined by Method 24, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105 except for glues and adhesive coatings, two component reactive coatings forming volatile reaction products, coatings requiring energy other than heat to initiate curing, and coatings requiring high temperature catalysis for curing, providing the person proposing testing of the material

submits to the Agency proof that the Method 24 results would not be representative and proof that a proposed alternative test method gives representative, accurate test results. For printing inks, the volatile organic material content shall be determined by Method 24A, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105. Any alternate test method must be approved by the Agency which shall consider data comparing the performance of the proposed alternative to the performance of the approved test method(s). If the Agency determines that such data demonstrates that the proposed alterantive will acheive results equivalent to the approved test method(s), the Agency shall approve the proposed alternative.

b) Transfer efficiency shall be determined by a method, procedure or standard approved by the USEPA, under the applicable new source performance standard or until such time as USEPA has approved and published such a method, procedure or standard, by any appropriate method, procedure or standard approved by the Agency.

(Source: Amended at ___ Ill. Reg. _____, effective _____)

Section 215.241 External Floating Roofs

The requirements of subsection 215.124(a) shall not apply to any stationary storage tank equipped with an external floating roof:

a) Exempted under Section 215.123(a)(2) through (a)(6);

b) Of welded construction equipped with a metallic-type shoe seal having a secondary seal from the top of the shoe seal to the tank wall (shoe-mounted secondary seal);

c) Of welded construction equipped with a metallic type shoe seal, a liquid-mounted foam seal, a liquid-mounted liquid-filled-type seal, or other closure device of equivalent control efficiency approved by the Agency in which a petroleum liquid with a true vapor pressure less than 27.6 kPa (4.0 psia) at 294.3°K (70°F) is stored; or

d) Used to store crude oil with a pour point of 50°F or higher as determined by ASTM Standard D97-66 incorporated by reference in Section 215.105.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.404 Testing and Monitoring (Repealed)

~~a) Upon a reasonable request of the Agency, the owner or operator of a volatile organic material source subject to this Subpart shall at his own expense demonstrate compliance by methods or procedures approved by the Agency.~~

~~b) A person planning to conduct a volatile organic material emissions test to demonstrate compliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the Agency may observe the test.~~

(Source: Repealed at __ Ill. Reg. _____ effective _____)

Section 215.409 Testing Methods for Volatile Organic Material Content

The volatile organic material content of fountain solution and all coatings shall be determined by Method 24, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105 The volatile organic material content of printing inks shall be determined by Method 24A, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105. Any alternate test method must be approved by the Agency, which shall consider data comparing the performance of the proposed alternative to the performance of the approved test method(s). If the Agency determines that such data demonstrates that the proposed alternative will achieve results equivalent to the approved test methods(s), the Agency shall approve the proposed alternative.

(Source: Added at __ Ill. Reg. _____ effective _____)

Section 215.410 Emissions Testing

a) Any tests of volatile organic material emissions, including tests conducted to determine control equipment efficiency or control device destruction efficiency, shall be conducted in accordance with the methods and procedures specified in Section 215.102.

b) Upon a reasonable request by the Agency, the owner or operator of a volatile organic material emission source required to comply with the limits of this Subpart shall conduct emissions testing, at his own expense, to demonstrate compliance.

c) A person planning to conduct a volatile organic material emissions test to demonstrate compliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the Agency may observe the test.

(Source: Added at __ Ill. Reg. _____ effective _____)

Section 215.421 General Requirements

a) The owner or operator of a plant which has more than 1,500 components in gas or light liquid service, which components are used to manufacture the synthetic organic chemicals or polymers listed in Appendix D, shall conduct leak inspection and repair programs in accordance with this Subpart for that ~~equipment~~ component containing more than 10 percent volatile organic material as determined by ASTM method E-260, E-168, and E-169, incorporated by reference in Section 215.105. ~~A component shall be considered to be leaking if the volatile organic material concentration exceeds 10,000 ppm when measured at a distance of 0 cm from the component.~~ The provisions of this Subpart are not applicable if the products listed in Appendix D are made from natural fatty acids for the production of hexadecyl alcohol.

b) A component shall be considered to be leaking if the volatile organic material concentration exceeds 10,000 parts per million (ppm) when measured at a distance of 0 cubic meter (cm) from the component as determined by Method 21, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.445 Leaks: General Requirements

a) The owner or operator of a petroleum refinery shall:

~~a)~~1) Develop a monitoring program plan consistent with the provisions of Section 215.446;

~~b)~~2) Conduct a monitoring program consistent with the provisions of Section 215.447;

~~c)~~3) Conduct all tests for leaks in accordance with Method 21, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105.

~~c)~~4) Record all leaking components which have a volatile organic material concentration exceeding 10,000 ppm consistent with the provisions of Section 215.448;

~~d)~~5) Identify each component consistent with the monitoring program plan submitted pursuant to Section 215.446;

~~e)~~6) Repair and retest the leaking components as soon as possible within 22 days after the leak is found, but no later than June 1 for the purposes of Section 215.447(a)(1), unless the leaking components cannot be repaired until the unit is shut down for turnaround; and

~~f)~~7) Report to the Agency consistent with the provisions of Section 215.449.

b) A component shall be considered to be leaking if the volatile organic material concentration exceeds 10,000 ppm when measured at a distance of 0 cm from the component as determined by Method 21, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.464 Emissions Testing ~~and Monitoring~~

~~a) Upon a request of the Agency, the owner or operator of a volatile organic material source required to comply with Sections 215.461 through 215.464 shall, at his own expense, demonstrate compliance by methods or procedures approved by the Agency.~~

~~b) A person planning to conduct a volatile organic material emission test shall notify the Agency of the intent to test not less than 30 days before the planned initiation of the test so the Agency may at its option observe the test.~~

a) Any tests of volatile organic material emissions, including tests conducted to determine control equipment efficiency or control device destruction efficiency, shall be conducted in accordance with the methods and procedures specified in Section 215.102.

b) Upon a reasonable request by the Agency, the owner or operator of a volatile organic material emission source required to comply with a limit of Sections 215.461 through 215.464 shall conduct emissions testing, at such person's own expense, to demonstrate compliance.

c) A person planning to conduct a volatile organic material emission test to demonstrate compliance shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the Agency may observe the test.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.467 Testing Methods for Volatile Organic Material Content

The volatile organic material content for all VOM emitting materials except printing inks shall be determined by Method 24, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105. Any alternate test method must be approved by the Agency, which shall consider data comparing the performance of the proposed alternative to the performance of the approved test method(s). If the Agency determines that such data demonstrates that the proposed alternatie will achieve results equivalent to the the approved test method(s), the agency shall approve the proposed alternative.

(Source: Added at __ Ill. Reg. _____ effective _____)

SUBPART Y: GASOLINE DISTRIBUTION

Section 215.582 Bulk Gasoline Terminals

a) No person ~~may~~ shall cause or allow the transfer of gasoline into any delivery vessel from any bulk gasoline terminal unless:

1) The bulk gasoline terminal is equipped with a vapor control system that limits emission of volatile organic material to 80 mg/l (0.00067 lbs/gal) of gasoline loaded;

2) The vapor control system is operating and all vapors displaced in the loading of gasoline to the delivery vessel are vented only to the vapor control system;

3) There is no liquid drainage from the loading device when it is not in use;

4) All loading and vapor return lines are equipped with fittings which are vapor tight; and

5) The delivery vessel displays the appropriate sticker pursuant to the requirements of Section 215.584(b) or (d); or, if the terminal is driver-loaded, the terminal owner or operator shall be deemed to be in compliance with this Section when terminal access authorization is limited to those owners and/or operators of delivery vessels who have provided a current certification as required by Section 215.584(c)(3).

~~b) Emissions of organic material from bulk gasoline terminals shall be determined by the procedure described in EPA-450/2-77-026, Appendix A, as revised from time to time, or by any other equivalent procedure approved by the Agency.~~

b)c) Bulk gasoline terminals were required to take certain actions to achieve compliance which are summarized in Appendix C.

c)~~d)~~ The operator of a bulk gasoline terminal shall:

1) Operate the terminal vapor collection system and gasoline loading equipment in a manner that prevents:

A) Gauge pressure from exceeding 18 inches of water and vacuum from exceeding 6 inches of water as measured as close as possible to the vapor hose connection; and

B) A reading equal to or greater than 100 percent of the lower explosive limit (LEL measured as propane) when tested in accordance with the procedure described in EPA 450/2-78-051 Appendix B; and

C) Avoidable leaks of liquid during loading or unloading operations.

2) Provide a pressure tap or equivalent on the terminal vapor collection system in order to allow the determination of compliance with 215.582(d)(1)(A); and

3) Within 15 business days after discovery of the leak by the owner, operator, or the Agency. repair and retest a vapor collection system which exceeds the limits of subsection (c)(1)(A) or (B).

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.584 Gasoline Delivery Vessels

a) Any delivery vessel equipped for vapor control by use of vapor collection equipment:

1) Shall have a vapor space connection that is equipped with fittings which are vapor tight;

2) Shall have its hatches closed at all times during loading or unloading operations, unless a top

loading vapor recovery system is used;

3) Shall not internally exceed a gauge pressure of 18 inches of water or a vacuum of 6 inches of water;

4) Shall be designed and maintained to be vapor tight at all times during normal operations;

5) Shall not be refilled in Illinois at other than:

A) A bulk gasoline terminal that complies with the requirements of Section 215.582 or

B) A bulk gasoline plant that complies with the requirements of Section 215.581(b)(1) and (2).

6) Shall be tested annually in accordance with ~~the pressure-vacuum test procedure described in EPA 450/2-78-051 Appendix A.~~ Method 27, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105. Each vessel must be repaired and retested with 15 business days after discovery of the leak by the owner, operator, or the Agency, when it fails to sustain:

A) A pressure drop of no more than three inches of water in five minutes; and

B) A vacuum drop of no more than three inches of water in five minutes.

b) Any delivery vessel meeting the requirements of subsection (a) shall have a sticker affixed to the tank adjacent to the tank manufacturer's data plate which contains the tester's name, the tank identification number and the date of the test. The sticker shall be in a form prescribed by the Agency, and shall be displayed no later than December 31, 1987.

c) The owner or operator of a delivery vessel shall:

1) Maintain copies of any test required under subsection (a)(6) for a period of 3 years;

2) Provide copies of these tests to the Agency upon request; and

3) Provide annual test result certification to bulk gasoline plants and terminals where the delivery vessel is loaded.

d) Any delivery vessel which has undergone and passed a test in another state which has a USEPA-approved leak testing and certification program will satisfy the requirements of subsection (a). Delivery vessels must display a sticker, decal or stencil approved by the state where tested or comply with the requirements of subsection (b). All such stickers, decals or stencils shall be displayed no later than December 31, 1987.

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.585 Gasoline Volatility Standards

a) No person shall sell, offer for sale, dispense, supply, offer for supply, or transport for use in Illinois gasoline whose Reid vapor pressure exceeds the applicable limitations set forth in subsections (b) and (c) during the regulatory control periods, which shall be July 1 to August 31 for retail outlets, wholesale purchaser-consumer facilities, and all other facilities.

b) The Reid vapor pressure of gasoline, a measure of its volatility, shall not exceed 9.5 psi (65.5 kPa) during the regulatory control period in 1990 and each year thereafter.

c) The Reid vapor pressure of ethanol blen gasolines shall not exceed the limitations for gasoline set forth in subsection (b) by more than 1.0 psi (6.9 kPa). Notwithstanding this limitation, blenders of ethanol blend gasolines whose Reid vapor pressure is less than 1.0 psi above the base stock gasoline immediately after blending with ethanol are prohibited from adding butane or any product that will increase the Reid vapor pressure of the blended gasoline.

d) All sampling of gasoline required pursuant to the provisions of this Section shall be conducted by one or more of the following approved methods or procudures which are incorporated by reference in Section 215.105.

1) For manual sampling, ASTM D4057;

2) For automatic sampling, ASTM D4177;

3) Sampling procedures for Fuel Volatility, 40 CFR 80 Appendix D.

e) The Reid vapor pressure of gasoline shall be measured in accordance with either test method ASTM D323 or ~~in the case of gasoline oxygenate blends which contains water extractable oxygenates,~~ a modification of ASTM D323

known as the "dry method" as set forth in 40 CFR 80, Appendix E, incorporated by reference in Section 215.105. For gasoline - oxygenate blends which contain water-extractable oxygenates, the Reid vapor pressure shall be measured using the dry method test.

f) The ethanol content of ethanol blend gasolines shall be determined by use of on e of the approved testing methodologies specified in 40 CFR 80, Appendix F, incorporated by reference in Section 215.105.

g) Any alternate to the sampling or testing methods or procedures contained in subsections (d), (e), and (f) must be approved by the Agency, which shall consider data comparing the performacne of the proposed alternative to the performance of one or more approved test methods or procedures. Such data shall accompanyany request for Agency approval of any altrnate test procedure. If the Agency determines that such data demonstrates that the proposed alternative will achieve results equivalent to the approved test mehtods or will achieve results eqivalent to the approved test methods or procedures, the Agency shall approve the proposed alternative.

h) Each refiner or supplier that distributes gasoline or ethanol blends shall:

1) During the regulatory control period, ~~document and clearly designate~~ state that the Reid vapor pressure of all gasoline or ethanol blends leaving the refinery or distribution facility for use in Illinois complies with the Reid vapor pressure limitations set forth in Section 215.585(b) and (c). Any facility receiving this gasoline shall be provided with a copy of ~~the accompanying document specifying the Reid vapor pressure~~ an invoice, bill of lading, or other documentation used in normal business practice stating that the Reid vapor pressure of the gasoline complies with the State Reid vapor pressure standard.

2) Maintain records for a period of ~~two~~ one years on the Reid vapor pressure, quantity shipped and date of delivery of any gasoline or ethanol blends leaving the refinery or distribution facility for use in Illinois. The Agency shall be provided with copies of such records if requested.

(Source: Added at __ Ill. Reg. _____ effective _____)

Section 215.586 Emissions Testing

a) Any tests of organic material emissions from bulk gasoline terminals, including tests conducted to determine control equipment efficiency or control device destruction efficiency, shall be conducted in accordance with the Test Methods and Procedures for the Standards of Performance for Bulk Gasoline Terminals, 40 CFR 60.503, incorporated by reference in Section 215.105. Any alternate test method must be approved by the Agency, which shall consider data comparing the performance of the proposed alternative to the performance of the approved tst method(s). If the Agency determines that such data demonstrates the the proposed alternative will achieve results equivalent ot the approved test method(s), the Agency shall approve the proposed alternative.

b) Upon a reasonable request by the Agency, the owner or operator of a volatile organic material emission source subject to this Subpart shall conduct emissions testing, at such person's own expense, to demonstrate compliance.

c) A person planning to conduct an organic material emissions test to demonstrate ccmpliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the Agency may observe the test.

(Source: Added at __ Ill. Reg. _____ effective _____)

SUBPART Z: DRY CLEANERS

Section 215.603 ~~Testing and Monitoring~~ Leaks

~~a) Compliance with Section 215.601(a), (f) and (g) shall be determined by a visual inspection;~~

~~b)~~ ~~Compliance with Section 215.601(c)~~ The presence of leaks shall be determined for purposes of Section 215.601 (c) by a visual inspection of the following: hose connections, unions, couplings and valves; machine door gaskets and seatings; filter head gasket and seating; pumps; base tanks and storage containers; water separators; filter sludge recovery; distillation unit; diverter valves; saturated lint from lint baskets; and cartridge filters; and

~~c) Compliance with Section 215.601(b), (d) and (e) shall be determined by methods or procedures approved by the Agency.~~

(Source: Amended at __ Ill. Reg. _____ effective _____)

Section 215.614 Testing Method for Volatile Organic Material Content of Wastes

The volatile organic material content of wastes shall be determined by Method 24, 40 CFR 60, Appendix A, incorporated by reference in Section 215.105. Any alternate test method must be approved by the Agency, which shall consider data comparing the performance of the proposed alterntaive to the performance of the proposed alternative to the performance of the approved test method(s). If the Agency determines that such data demonstrates that the proposed alternative will achieve results equivalent ot the approved thest methos(s), the Agency shall approve the proposed alternative.

(Source: Added at __ Ill. Reg. _____ effective _____)

Section 215.615 Emissions Testing

a) Any tests of volatile organic material emissions, including tests conducted to determine control equipment efficiency or control device destruction efficiency, shall be conducted in accordance with the methods and procedures specified in Section 215.102.

b) Upon a reasonable request by the Agency, the owner or operator of a volatile organic material emissions source subject to this Subpart shall conduct emissions testing, at such person's own expense, to demonstrate compliance.

c) A person planning to conduct a volatile organic material emissions test to demonstrate compliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the Agency may observe the test.

(Source: Added at __ Ill. Reg. _____ effective _____)

SUBPART AA: PAINT AND INK MANUFACTURING

Section 215.886 Emissions Testing ~~and Monitoring~~

~~a) Upon a reasonable request of the Agency, the owner or operator of a polystyrene plant subject to this Subpart shall at his own expense demonstrate compliance by use of the following method: 40 CFR 60, Appendix A, Method 25 - Determination of Total Gaseous Non-Methane Organic Emissions as Carbon (1984). The incorporation by reference contains no later amendments or editions.~~

~~b) A person planning to conduct a volatile organic material emissions test to demonstrate compliance with this~~

~~Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the agency may observe the test.~~

a) Any tests of volatile organic material emissions, including tests conducted to determine control equipment efficiency or control device destruction efficiency, shall be conducted in accordance with the methods and procedures specified in Section 215.102.

b) Upon a reasonable request by the Agency, the owner or operator of a polystyrene plant subject to this Subpart shall conduct emissions testing, at his own expense, to demonstrate compliance.

c) A person planning to conduct a volatile organic material emissions test to demonstrate compliance with this Subpart shall notify the Agency of that intent not less than 30 days before the planned initiation of the tests so the Agency may observe the test.

(Source: Amended at __ Ill. Reg. _____ effective _____)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and order was adopted on the 10th day of May, 1990 by a vote of 7-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board