

ILLINOIS POLLUTION CONTROL BOARD
October 11, 1990

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

ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board on the Illinois Environmental Protection Agency's ("Agency") motion for corrective rulemaking filed September 6, 1990. The Agency asserts that certain portions of the rulemaking are deficient in that they are not federally approvable. The Agency requests that the Board, upon its own initiative, correct these alleged deficiencies by instituting a regular rulemaking proceeding. The Illinois Environmental Regulatory Group filed its Response and Objection to the Agency's motion on September 20, 1990.

Most of the issues put forth in this motion for corrective rulemaking have been considered at length by this Board during the course of the RACT proceedings and indeed, many were addressed in our denial of the Agency's Motion for Reconsideration on July 3, 1990. The reasons given for our denial then apply equally well now. The Board also points out that the time for reconsideration of this matter ran out long ago. In the meantime, the United States Environmental Protection Agency (USEPA) promulgated Federal revisions to the VOC RACT rules for the Chicago area and took final rulemaking action on revisions to the Illinois Ozone State Implementation Plan (SIP), notice of which was published in the Federal Register on June 29, 1990. (55 Fed. Reg. 26814 (1990)). This rulemaking has now been appealed to the United States District Court of Appeals for the Seventh Circuit by numerous parties in a consolidated proceeding.

Moreover, the USEPA, in its letter of August 17, 1990 to the Agency's Manager of the Division of Air Pollution Control, stated that a detailed review of the SIP Revision (R89-16) was in progress. Upon completion of the review, the USEPA proposed to disapprove the rules outlined by the Agency in the current motion, "as well as any other rules found not approvable later." (See Attachment 4 to Agency Motion for Reconsideration) (emphasis added). At this time it is not known whether additional provisions will be disapproved.

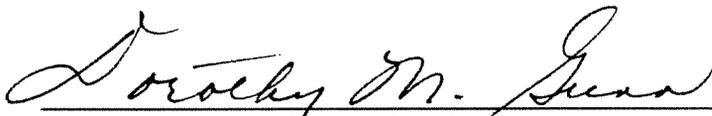
The Board agrees that it is desirable to have federally approvable regulations in place at the state level. These regulations must, however, comport with State law as well. The Board cannot know, however, what the final resolution of the VOC RACT appeals, and hence the Federal revisions to the SIP, will be. No briefs have been filed by appellants; the administrative record was due to be filed with the court on October 9, 1990.

Because these pending appeals may alter what is considered federally approvable, and because the USEPA, by its own admission, has not completed its review of our SIP Revision, judicial and administrative economy would not be served by proceeding with a State rulemaking at this time. Therefore, the Agency's request that the Board institute a rulemaking on its own initiative is denied.

As a final note, the Board continues to agree that a clerical error between the definition of "VOMC" and "VOC" has taken place. As we stated in our Order of July 3, 1990, this unfortunate error will be corrected in the appropriate rulemaking docket at the earliest possible convenience. Due to the above, the Agency's motion is denied in part and granted in part.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 11th day of October, 1990 by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board