

ILLINOIS POLLUTION CONTROL BOARD  
February 23, 1995

IN THE MATTER OF: )  
 )  
EMERGENCY RULE AMENDING 7.2 psi ) R95-10  
REID VAPOR PRESSURE REQUIREMENT ) (Rulemaking - Air)  
IN THE METRO-EAST AREA, )  
35 ILL. ADM. CODE 219.585(a) )

ADOPTED EMERGENCY RULE. FINAL ORDER.

OPINION AND ORDER OF THE BOARD (by C. A. Manning)

This matter comes before the Board on a motion for emergency rulemaking filed by the Illinois Environmental Protection Agency (Agency) on February 14, 1995. The purpose of the Agency's motion is to delay the compliance date of the gasoline volatility rule at 35 Ill. Adm. Code 219.585(a), from May 1, 1995 to June 1, 1995. The rule applies in the Metro-East moderate ozone nonattainment area (Madison, Monroe, and St. Clair Counties). Specifically, 35 Ill. Adm. Code 219.585(a) requires all "supply facilities" that is, facilities other than retail outlets and wholesale purchaser consumer facilities, to lower gasoline Reid Vapor Pressure (RVP) during the ozone season to 7.2 pounds per square inch (psi) beginning May 1, 1995. The facilities covered by this rule include refiners, distributors, and bulk terminals. Retail and wholesale facilities are required to comply one month later, by June 1, 1995.

For the reasons stated below, the Board finds, pursuant to Section 27(c) of the Environmental Protection Act (Act), 5 ILCS 5/27(c) (1992) and Section 5-45 of the Illinois Administrative Procedure Act (APA), 5 ILCS 100/5-45 (1992), that a "situation exists which reasonably constitutes a threat to the public interest, safety or welfare". The Board adopts an emergency amendment changing the compliance date of Section 219.585(a) to June 1, 1995, so that all facilities are required to comply by that date. This rule will become effective upon filing with the Secretary of State for a period of 150 days.

STATUTORY PROVISIONS

At Section 182(b), the Clean Air Act, as amended in 1990 (42 USC § 7511a (b))("CAA"), required Illinois to submit a plan by November 15, 1993, for achieving a 15% reduction of volatile organic material emissions in the Metro-East ozone nonattainment area (15% Rate-of-Progress (ROP)Plan). Illinois submitted its 15% ROP Plan on November 13, 1993. One of the control measures included in the 15% ROP Plan required that the volatility of gasoline be reduced during the ozone season. The Board adopted the required rules in docket R94-12, In the Matter of: 15% ROP Plan Control Measures for VOM Emissions - Part I: Pressure

/Vacuum Relief Valves and 7.2 RVP (September 15, 1994). There are also federal gasoline volatility regulations found at 40 CFR Part 80, adopted at 55 Fed. Reg. 23658 (June 11, 1990).

The Board's rulemaking requirements in this matter are contained in the APA and the Act. Section 5-45 provides in pertinent part:

"Emergency" means the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare. If any agency finds that any emergency exists that requires adoption of a rule upon fewer days than is required by Section 5-40 and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing upon filing of notice of emergency rulemaking with the Secretary of State under Section 5-70. . . Subject to applicable constitutional or statutory provisions, an emergency rule become effective immediately upon filing under Section 5-65 or at a stated date less than 10 days thereafter. The Agency shall take reasonable and appropriate measures to make emergency rules shown to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5-40 is not precluded.

Section 27(c) of the Environmental Protection Act provides:

When the Board finds that a situation exists which reasonably constitutes a threat to public interest, safety or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5.02 [5 ILCS 100/5-45] of the Illinois Administrative Procedure Act.

Emergency rules are scrutinized by both the Joint Committee on Administrative Rules and by the courts to determine whether "there exists a situation which reasonably constitutes a threat to the public interest, safety or welfare". Citizens for a Better Environment v. Illinois Pollution Control Board, (1st Dist. 1983) 162 Ill. App.3d 105, 504 N.E. 2d 166, 169.

#### THE AGENCY'S PROPOSAL

##### Description of the Emergency

The Agency describes that its motion is based on contacts with, and information supplied by, the petroleum refining industry. The emergency and hardship alleged here is based on the interplay of the federal and state gasoline volatility rules. The Agency explains that:

Federal regulations [40 CFR 80] lower the RVP of gasoline in two steps. Step I requires the entire country to have 9.0 RVP gasoline at supply facilities beginning on May 1st of each year. Step II begins on June 1st of each year and requires that southern tier nonattainment areas have 7.8 psi RVP gasoline at both the supply and retail levels. In December 1993, Missouri Department of Natural Resources indicated that it would propose a regulation for 7.2 psi RVP gasoline. Therefore, IEPA proposed and the Illinois Pollution Control Board adopted [in R94-12] a similar rule requiring 7.2 psi RVP. Further, the Illinois rule requires 7.2 psi RVP gasoline at supply facilities in the Metro-East area in May when the rest of the country is only required to have 9.0 psi RVP gasoline (See[Motion,] Attachment 3). The compliance date for supply facilities is inconsistent with the date specified by federal regulations for southern tier nonattainment areas storing the lowest required RVP gasoline. The Agency's Technical Support Document contains a summary of the monthly supplier and retailer RVP requirements under both the federal and Illinois regulations (See Motion, Attachment 1).

The petroleum refining industry [which] markets gasoline to these other facilities does not distinguish between the Metro-East St. Louis, Illinois, area and the St. Louis, Missouri, area. Due to the geographic nature of the greater St. Louis area and the limited storage capacity for petroleum products, not changing the compliance dates for these other facilities [i.e. the refiners, distributors and bulk terminals] located in the Metro-East ozone nonattainment area would require the petroleum refining industry to supply and sell to the majority of the market 7.2 psi RVP gasoline, when such gasoline is only required in 20-25% of the market.

Mr. Philip Bush of Amoco has called the Agency to describe the hardship that would fall on the affected gasoline refiners and distributors. The hardship to refiners is an acceleration of their production schedules to supply lower RVP. The hardship for the bulk gasoline terminals is a shorter time to blend down their stock and a greater risk of being found out of compliance. (See: [Motion], Attachment 1).

Most importantly, if the May 1st requirement is changed to June 1st, the USEPA 9.0 psi RVP standard would still apply, so the loss of emission reduction would have no effect on the amount of VOM emissions reduction credit being claimed for 15% ROP Plan purposes (See: [Motion],

Attachment 1). Moreover, the Federal Regulations for Missouri do not require that other facilities lower RVP before gasoline dispensing operations are so required.

The Agency emphasized that the reduction of RVP from 9.0 psi to 7.2 psi is part of its 15% ROP plan and a control measure that the regulated community agreed to. Given the difficulties cited, the proposed revision to the regulation is reasonable and it achieves regulatory consistency with existing federal requirements. (Motion, # 4-8).

As proof of the alleged hardship, the Agency has supplied copies of letters to it from various members of the regulated community who have requested or who support the change. These include, in addition to Amoco, the Illinois Petroleum Council, Marathon Oil Co., Phillips 66 Co., and Shell Oil Co. (Motion, Attachment 4)

#### Description of the Proposed Amendments

The proposed amendments involve merely a deletion of the last two and a half lines of 35 Ill. Adm. Code 219.585(a), as follows:

#### SUBPART Y: GASOLINE DISTRIBUTION

#### Section 219.585 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) below during the regulatory control periods, which shall be June 1 to September 15 ~~for retail outlets and wholesale purchaser consumer facilities, and from May 1 to September 15 for all other facilities~~

#### THE BOARD'S ADOPTED RULES

The Board is persuaded that the requested change would have little environmental effect. The current USEPA 9.0 psi RVP standard will continue to be in effect during the month of May, so that no regulatory gap will occur. The current compliance date for supply facilities in Illinois is not consistent with the June 1 date specified by federal regulations for southern tier nonattainment areas storing the lowest required RVP gasoline. Since the petroleum refining industry does not distinguish between the Illinois and Missouri St. Louis metropolitan area, the supply facilities in the area would be required to supply and sell 7.2 psi RVP gasoline to a very limited portion of the entire

market, and if the supply facilities are located in Illinois, 7.2 psi RVP gasoline only could be produced and distributed to the entire market one month earlier than otherwise required under Missouri and federal law.

The suggested June 1 compliance date is consistent with USEPA requirements for the sale of lower RVP gasoline in the East St. Louis, Missouri area. While there will be some small loss in actual VOM emissions reductions during May, estimated by the Agency to be 0.27 tons per day (TPD), the Agency believes that this will not require adjustment in the 8.55 TPD 15% ROP 7.2 RVP gasoline emissions reduction for which Illinois has taken credit in the ROP Plan. This is because the ROP reduction is based on calculation methodologies that take into account factors representative of the summer months between June and August, including driving patterns and meteorological conditions. (Motion, Attachment 1, pp. 5-6).

The original May 1 compliance date was agreed to by the Agency and the regulated community, and pursuant to the Section 28.5 fast-track rulemaking requirements, the Board adopted the agreed-upon rule. The Agency states that, "[a]t the time of the original proposal, it was unaware of the different federal May supplier requirements between Class C and [including Illinois] and Class B [including Missouri] areas". The Board accordingly cannot find that the hardship to the industry is self-imposed, so as to preclude consideration of this matter as an APA "emergency" under the facts of this case.

The Board agrees with the Agency that the hardship asserted by the petroleum industry is real: 1) for the refiners, acceleration of production schedules to supply lower volatility gasoline for only one small area of a larger market area; 2) for pipelines, the need to ship a separate, low RVP to the Illinois market during the month of May; and 3) for gasoline distributors, the shortening of time to blend down their tanks from higher volatility winter gasoline and the resulting rise of the risk of being out of compliance. Under these circumstances, the Board finds, as the Agency suggests, that "the proposed revision is reasonable and further achieves the regulatory consistency originally intended, with no detriment to the Metro-East air quality". (Motion, Attachment 1, p. 6)

Finally, the Board observes that today's emergency rule will expire within 150 days of its filing the maximum term of any emergency rule. The APA prohibits adoption of an emergency rule "more than once in any 24 month period" (5 ILCS 100/5-45), so that any extension of this five month emergency exemption must be obtained through regular rulemaking or through the Act's other regulatory relief mechanisms. The Agency's Technical Support Document indicates that the "Agency intends to file a proposal". (Motion, Attachment 1, p. 1)

ORDER

The Board hereby adopts the following emergency rule. The Clerk is directed to cause its filing with the Secretary of State.

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

PART 219  
 ORGANIC MATERIAL EMISSION STANDARDS AND LIMITATIONS FOR THE  
 METRO EAST AREA

SUBPART A: GENERAL PROVISIONS

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219.100	Introduction
219.101	Savings Clause
219.102	Abbreviations and Conversion Factors
219.103	Applicability
219.104	Definitions
219.105	Test Methods and Procedures
219.106	Compliance Dates
219.107	Operation of Afterburners
219.108	Exemptions, Variations, and Alternative Means of Control or Compliance Determinations
219.109	Vapor Pressure of Volatile Organic Liquids
219.110	Vapor Pressure of Organic Material or Solvents
219.111	Vapor Pressure of Volatile Organic Material
219.112	Incorporations by Reference
219.113	Monitoring for Negligibly-Reactive Compounds
219.114	Compliance with Permit Conditions

SUBPART B: ORGANIC EMISSIONS FROM STORAGE AND LOADING OPERATIONS

Section	
219.119	Applicability for VOL
219.121	Storage Containers
219.122	Loading Operations
219.123	Petroleum Liquid Storage Tanks
219.124	External Floating Roofs
219.125	Compliance Dates (Repealed)
219.126	Compliance Plan (Repealed)

SUBPART C: ORGANIC EMISSIONS FROM MISCELLANEOUS EQUIPMENT

Section

219.141 Separation Operations  
 219.142 Pumps and Compressors  
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SUBPART E: SOLVENT CLEANING

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 219.181 Solvent Cleaning in General  
 219.182 Cold Cleaning  
 219.183 Open Top Vapor Degreasing  
 219.184 Conveyorized Degreasing  
 219.185 Compliance Schedule (Repealed)  
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SUBPART F: COATING OPERATIONS

Section  
 219.204 Emission Limitations  
 219.205 Daily-Weighted Average Limitations  
 219.206 Solids Basis Calculation  
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SUBPART G: USE OF ORGANIC MATERIAL

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 219.301 Use of Organic Material  
 219.302 Alternative Standard  
 219.303 Fuel Combustion Emission Units  
 219.304 Operations with Compliance Program

SUBPART H: PRINTING AND PUBLISHING

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 219.401 Flexographic and Rotogravure Printing  
 219.402 Applicability  
 219.403 Compliance Schedule  
 219.404 Recordkeeping and Reporting  
 219.405 Heatset-Web-Offset Lithographic Printing

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

Section  
 219.421 General Requirements  
 219.422 Inspection Program Plan for Leaks  
 219.423 Inspection Program for Leaks

219.424 Repairing Leaks  
 219.425 Recordkeeping for Leaks  
 219.426 Report for Leaks  
 219.427 Alternative Program for Leaks  
 219.428 Open-Ended Valves  
 219.429 Standards for Control Devices  
 219.430 Compliance Date (Repealed)

SUBPART R: PETROLEUM REFINING AND  
 RELATED INDUSTRIES; ASPHALT MATERIALS

Section  
 219.441 Petroleum Refinery Waste Gas Disposal  
 219.442 Vacuum Producing Systems  
 219.443 Wastewater (Oil/Water) Separator  
 219.444 Process Unit Turnarounds  
 219.445 Leaks: General Requirements  
 219.446 Monitoring Program Plan for Leaks  
 219.447 Monitoring Program for Leaks  
 219.448 Recordkeeping for Leaks  
 219.449 Reporting for Leaks  
 219.450 Alternative Program for Leaks  
 219.451 Sealing Device Requirements  
 219.452 Compliance Schedule for Leaks  
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SUBPART S: RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS

Section  
 219.461 Manufacture of Pneumatic Rubber Tires  
 219.462 Green Tire Spraying Operations  
 219.463 Alternative Emission Reduction Systems  
 219.464 Emission Testing  
 219.465 Compliance Dates (Repealed)  
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 219.481 Control of Reactors, Distillation Units, Crystallizers,  
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 Systems and Filters  
 219.483 Material Storage and Transfer  
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 219.488 Monitoring for Air Pollution Control Equipment  
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## SUBPART V: BATCH OPERATIONS AND AIR OXIDATION PROCESSES

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 219.521 Definitions (Repealed)  
 219.525 Emission Limitations for Air Oxidation Processes  
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 219.541 Pesticide Exception

## SUBPART X: CONSTRUCTION

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 219.561 Architectural Coatings  
 219.562 Paving Operations  
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## SUBPART Y: GASOLINE DISTRIBUTION

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 219.583 Gasoline Dispensing Operations - Storage Tank Filling  
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 EMERGENCY  
 219.586 Gasoline Dispensing Operations - Motor Vehicle Fueling  
 Operations (Repealed)

## SUBPART Z: DRY CLEANERS

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 219.604 Compliance Dates (Repealed)  
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 219.611 Applicability for Petroleum Solvent Dry Cleaners  
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## SUBPART AA: PAINT AND INK MANUFACTURING

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 219.621 Exemption for Waterbase Material and Heatset-Offset Ink  
 219.623 Permit Conditions (Repealed)  
 219.624 Open Top Mills, Tanks, Vats or Vessels  
 219.625 Grinding Mills  
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 219.630 Clean Up  
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SUBPART BB: POLYSTYRENE PLANTS

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SUBPART CC: POLYESTER RESIN PRODUCT MANUFACTURING PROCESS

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 219.666 Control Requirements  
 219.667 Compliance Schedule  
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SUBPART GG: MARINE TERMINALS

Section  
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 219.877 Emissions Limitation at Polystyrene Plants (Renumbered)  
 219.879 Compliance Date (Repealed)  
 219.881 Compliance Plan (Repealed)  
 219.883 Special Requirements for Compliance Plan (Repealed)

219.886 Emissions Testing (Renumbered)

SUBPART PP: MISCELLANEOUS FABRICATED PRODUCT MANUFACTURING PROCESSES

Section

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SUBPART QQ: MISCELLANEOUS FORMULATION MANUFACTURING PROCESSES

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Section

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SUBPART UU: RECORDKEEPING AND REPORTING

Section

219.990 Exempt Emission Units  
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Section 219.Appendix A: List of Chemicals Defining Synthetic Organic Chemical and Polymer Manufacturing

Section 219.Appendix B: VOM Measurement Techniques for Capture Efficiency

- Section 219.Appendix C: Reference Test Methods for Air Oxidation Processes
- Section 219.Appendix D: Coefficients for the Total Resource Effectiveness Index (TRE) Equation
- Section 219.Appendix E: List of Affected Marine Terminals

AUTHORITY: Implementing Section 10 and authorized by Section 28.5 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1010) (P.A. 87-1213, effective September 26, 1992) [415 ILCS 5/10 and 28.5].

SOURCE: Adopted at R91-7 at 15 Ill. Reg. 12231, effective August 16, 1991; amended in R91-23 at 16 Ill. Reg. 13564, effective August 24, 1992; amended in R91-28 and R91-30 at 16 Ill. Reg. 13864, effective August 24, 1992; amended in R93-9 at 17 Ill. Reg. 16636, effective September 27, 1993; amended in R93-14 at 18 Ill. Reg. at 1945, effective January 24, 1994; amended in R94-12 at 18 Ill. Reg. 14973, effective September 21, 1994; amended in R94-15 at 18 Ill. Reg. 16379, effective October 25, 1994; amended in R94-16 at 18 Ill. Reg. 16950, effective November 15, 1994; emergency amendment in R95-10 at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ for a maximum of 150 days.

#### SUBPART Y: GASOLINE DISTRIBUTION

##### Section 219.585 Gasoline Volatility Standards EMERGENCY

- 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) below during the regulatory control periods, which shall be June 1 to September 15 ~~for retail outlets and wholesale purchaser-consumer facilities, and from May 1 to September 15 for all other facilities.~~
- b) The Reid vapor pressure of gasoline, a measure of its volatility, shall not exceed 7.2 psi (49.68 kPa) during the regulatory control period in 1995 and each year thereafter.
- c) The Reid vapor pressure of ethanol blend gasolines having at least nine percent (9%) but not more than ten percent (10%) ethyl alcohol by volume of the blended mixture, shall not exceed the limitations for gasoline set forth in subsection (b) of this Section 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 in accordance with the procedures contained in 40 CFR Part 80, Appendix D, Sampling Procedures for Fuel Volatility, which are incorporated by reference in Section 219.112 of this Part.
- e) The Reid vapor pressure of gasoline shall be measured in accordance with the procedures contained in "Tests for Determining Reid Vapor Pressure (RVP) of Gasoline and Gasoline-Oxygenate Blends" as set forth in 40 CFR 80, Appendix E, incorporated by reference in 35 Ill. Adm. Code 219.112 of this Part.
- f) The ethanol content of ethanol blend gasolines shall be determined by use of one of the approved testing methodologies specified in 40 CFR 80, Appendix F, incorporated by reference in 35 Ill. Adm. Code 219.112 of this Part.
- g) Any alternate to the sampling or testing methods or procedures contained in subsections (d), (e), and (f) of this Section must be approved by the Agency, which shall consider data comparing the performance of the proposed alternative to the performance of one or more approved test methods or procedures. Such data shall accompany any request for Agency approval of any alternate test procedure. If the Agency determines that such data demonstrates that the proposed alternative will achieve results equivalent to the approved test methods or will achieve results equivalent to the approved test methods or procedures, the Agency shall approve the proposed alternative.
- h) Recordkeeping and reporting:
  - 1) Each refiner or supplier that distributes gasoline or ethanol blends shall:
    - A) During the regulatory control period, 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 35 Ill. Adm. Code 219.585(b) and (c) of this Part. Any source receiving this gasoline shall be provided with a copy of 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.

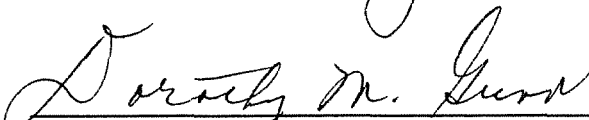
- B) Maintain records for a period of three years on the Reid vapor pressure, quantity shipped and date of delivery of any gasoline or ethanol blends leaving the refinery or distribution facility for use in Illinois. The Agency shall be provided with copies of such records if requested.
- 2) Records and reports required by subsections (h)(2)(A) and (h)(2)(B) below shall be made available to the Agency upon request. During the regulatory control period, the owner or operator of a gasoline dispensing operation subject to this Section shall:
- A) Retain a copy of 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 as provided in subsection (h)(1)(A) above;
  - B) Maintain records for a period of three years on the Reid vapor pressure, quantity received and date of delivery of any gasoline or ethanol blends arriving at the gasoline operation.

(Source: Emergency amendment at \_\_\_\_\_ Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_ for a maximum of 150 days)

IT IS SO ORDERED.

J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 23<sup>rd</sup> day of February, 1995, by a vote of 6-1.

  
 \_\_\_\_\_  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board