

ILLINOIS POLLUTION CONTROL BOARD  
March 11, 1993

IN THE MATTER OF: )  
 )  
JOINT PETITION OF ) AS 92-12  
CUMMINS ENGINE COMPANY ) (Adjusted Standard)  
AND THE ENGINE MANUFACTURERS )  
ASSOCIATION FOR ADJUSTED )  
STANDARDS FROM 35 ILL. ADMIN. )  
CODE 240.141 )

ORDER OF THE BOARD (by J. Anderson):

On February 16, 1993, joint petitioners Cummins Engine Company and the Engine Manufacturers Association (petitioners) filed a motion to stay the proceedings in this matter until January 29, 1994. Petitioners seek to await a decision of the California Air Resources Board (CARB), where petitioners are apparently seeking relief in California similar to that being sought before this Board. Before the end of the stay, petitioners propose to provide the Board and the Agency with either a) information related to CARB's decision or b) a status report on the California petition. Petitioners request that no hearing be scheduled by the Board until that time.

The Illinois Environmental Protection Agency (Agency) agrees, stating that it recommends that "the Board delay making a decision until [CARB] completes its research and makes a final determination". The Agency then states that it will reconsider the petitioners' petition after Navistar either demonstrates that CARB has made a final decision or provides a detailed status report. (Agency amended response and recommendation at 3, February 16, 1993).

The motion is denied.

While the Board recognizes that the record supporting its regulation of general applicability reflects the California experience in certain respects, an adjusted standard decision by this Board will not flow from a decision made by CARB. The Board's decision will be made in light of the Board's general diesel exhaust opacity regulation as well as Illinois' statutes and administrative law regarding adjusted standards. Also, while any CARB "research" data relevant to an adjusted standard petition is of course acceptable, we remind the petitioners that they cannot justify their adjusted standard by challenging the validity of the Board's regulation of general applicability.

We finally remind the petitioners that this petition was filed almost one year ago (at that time jointly with AS 92-4 and 92-11), and served to stay the operation of the regulation of general applicability. See Section 28.1(e) of the Environmental

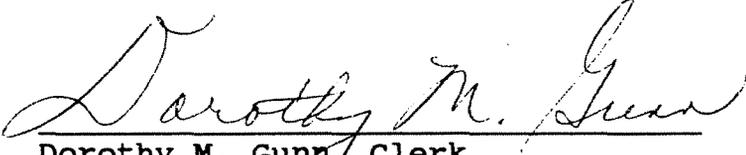
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Protection Act (415 ILCS 5/28.1(e)).<sup>1</sup> We suggest that the petitioners have been given a more than sufficient amount of time to perfect their justification.

The hearing officer is instructed to schedule a hearing in this matter.<sup>2</sup> The petitioners are reminded of the issues and questions contained in the Board's May 21, 1992 order and the Agency's request for information on page 3 of its February 1, 1993 amended response and recommendation.

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 11<sup>th</sup> day of March, 1993, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board

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<sup>1</sup> Formerly Ill.Rev.Stat. Ch.111 1/2, 1028.1(e).

<sup>2</sup> We note that on this day the Board adopted in AS 92-11 an order identical to this one in all substantive respects. We also note that no hearing is being scheduled in AS 92-4