

ILLINOIS POLLUTION CONTROL BOARD
April 6, 1995

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO 35 ILL.) R92-8
ADM. CODE SUBTITLE C (WATER) (Rulemaking-Water)
TOXICS & BIOACCUMULATION))

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

The Board's last action in this matter was, by order of January 26, 1995, to direct the hearing officer to:

expeditiously schedule hearings at which all other participants [than the proponent] may present their testimony in response to the record made by the joint proponents. Once this set of hearings is complete, the Board will determine whether first notice of any proposal, this proposal, or some variation of it, will be published in the Illinois Register, or whether this docket will be closed. (Order, p. 4).

Even before a hearing officer scheduling order could be distributed, the Board began to receive a series of filings requesting additional time to prepare for hearing and moving the Board to strike or otherwise rule on various aspects of the proposal in advance of any additional hearings.

This order addresses only the most recent filings, the joint proponents' March 17, 1995 motion to set briefing schedule.¹ On April 5, 1995, IERG filed a response in support of the motion, accompanied by a motion for leave to file instant, which is hereby granted.

The joint proponents' motion recites that:

the joint proponents have received several motions to strike various parts of the R92-8 rulemaking. These motions overlap in their scope as to the Sections of

¹ The previous filings were the Request for Reasonable Time and Affidavit of Whitney Wagner Rosen by Illinois Environmental Regulatory Group (IERG) (2/2/95); Response to Request for Time and Motion to File Instant by Joint Proponents (2/23/95); Motion to Conform Rule to Record and Law prior to First Notice by Illinois Fertilizer and Chemical Association (IFCA) (2/24/95); Motion to Strike by IERG (3/7/95); Motion to Strike by Chemical Industry Council of Illinois (3/8/95); Statement in Support of Motion to Strike by IFCA (3/13/95); and Motion to Strike by Illinois Environmental Protection Agency (IEPA) (3/16/95).

the proposed rulemaking that they seek to have stricken.

Based upon the past motions that have been brought, the level of interest shown by the other participants, and comments made at the last hearings, it seems a reasonable likelihood that other participants will be bringing similar motions.

To avoid multiple briefings, undue delay and duplication of efforts, the joint proponents are requesting the Board to set a briefing schedule to impose an orderly briefing of the motions that have been filed and will be filed....

The proposed briefing schedule will impose an ordered schedule on the next phase of these proceedings, avoid delays, and conserve judicial resources of the Board (Motion p. 1-2).

The joint proponents suggest that other participants be given three weeks in which to file any additional motions, and that they themselves be given three weeks in which to respond.

IERG, in its response, concurs with the joint proponents' request for establishment of a briefing schedule in this matter. Rather than the 21-day, 21-day schedule suggested by the joint proponents, IERG requests a 45-day, 45-day, 30-day schedule. IERG argues that 45 days for the filing of additional challenges to the proposal is necessary to accommodate those who "have yet to dedicate resources and efforts to such endeavors", and that a 30-day opportunity for participants to file replies to joint proponents' response to the various motions "is necessary to ensure that all issues raised ... are adequately addressed" (Response, p. 7, 9). IERG also asks that the Board 1) clarify that other participants need file only motions/briefs "which are appropriate for filing at this juncture", 2) state that participants need not re-submit previously filed motions, and 3) postpone the resumption of hearings until after the jurisdictional and other motions filed pursuant to this order have been ruled upon by the Board.

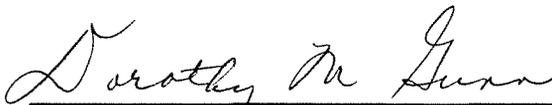
The Board had intended that its January 26 order end the latest pre-hearing phase in this proceeding, to allow the Board to determine the merits of the proposal on the basis of a complete hearing record as quickly as possible. The participants, on the other hand, clearly intend the Board to address the scope of the proposal in advance of any additional hearings. In the interests of avoiding piecemeal consideration of participants' requests, and given the lack of objection to the proposed briefing schedule, the Board will grant joint proponents' motion for briefing schedule.

As to the length of the schedule, in light of IERG's arguments the Board will lengthen the 42-day (21+21) schedule from that suggested by joint proponents, and will allow for a period for replies to joint proponents' response, but will not delay this proceeding for the full 120 days (45+45+30) requested by IERG. The Board instead establishes a 30-30-14 (74 day) schedule. As to the subject matter of motions/briefs pursuant to this order, the Board will entertain any challenges relating to the scope of the proposal, the Board's authority to adopt the proposed rule or any other pre-hearing matter. Participants need not re-submit the filings listed in footnote 1 of this order, although they are free to supplement them. The Board stays hearing in this matter, pending its ruling on motions listed in, or filed pursuant to, this order. Given these rulings, the Board denies IERG's February 2, 1995 Request for Time as moot.

To avoid any confusion, the Board calculates the briefing schedule dates as follows. Any participants who wish to file any additional motions, comments, or briefs concerning the scope of the R92-8 proposal, the Board's authority to adopt the proposed rule, or any other matter in advance of hearings to receive testimony in response to the proposal, are directed to make their filings so that they are received by the Board on or before May 9, 1995. Joint proponents are directed to file their response so that it is received by the Board no later than June 8, 1995. Participants may file any replies to the joint proponents response so that they are received by the Board no later than June 22, 1995. The Board would hope to rule on this matter in July, 1995.

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 6th day of April, 1995, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board