

ILLINOIS POLLUTION CONTROL BOARD
June 7, 1990

IN THE MATTER OF:)
)
RACT DEFICIENCIES,) R89-16(B)
AMENDMENTS TO 35 ILL. ADM.) (Rulemaking)
CODE 201, 211 AND 215)

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

This matter comes before the Board upon its own motion. On September 29, 1989 the Illinois Environmental Protection Agency ("Agency") filed a proposal to amend 35 Ill. Adm. Code 201, 211 and 215. Pursuant to the Board's Order of February 8, 1990, these amendments were divided into two categories - Subdocket (A) and Subdocket (B). Subsequent to notice requirements being met in conjunction with the Joint Committee on Administrative Rules ("JCAR") approval, the Board, in its Final Order of May 10, 1990, adopted Subdocket (A).

Insofar as Subdocket (B) is concerned, the Board is of the opinion that: (1) the proposed amendments are being promulgated by the USEPA and would therefore be duplicative; and (2) for the aforesaid reason, the amendments may very well be moot. In fact, the language contained in the Wisconsin v. Reilly settlement agreement clearly places the burden of adopting these regulations upon the USEPA rather than Illinois. For example, paragraph 24, Section (b) of the settlement agreement states:

Illinois agrees that it will submit to EPA some or all of the reasonably available control technology ("RACT") rules and RACT rule improvements specified for Illinois in Exhibit B.

[(Emphasis Added) Wisconsin v. Reilly
Agreement pg. 12)]

As noted in this Board's order of February 8, 1990, which rules, if any, that were proposed to the Board by the Agency were entirely discretionary. 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, dismissing Subdocket (B) will simply place them in the same position as the other rules the USEPA is promulgating. Accordingly, the dismissal of Subdocket (B) will in no way offend the intent of the settlement agreement.

Equally significant, the Board's February 8, 1990 order noted that:

...the rules which Illinois submits to USEPA must be properly adopted under the Environmental Protection Act as well as the Administrative Procedure Act. The Board does not believe that the amendments proposed to the Generic rule and SOCM rule (Subdocket (B)) will be properly adopted under Section 28.2, and the Board wants all concerned to be aware of this determination as soon as possible. (IPCB Order, 2/8/90)

Furthermore, the February 8, 1990 Board Order held that:

...in light of the timeframes associated with these proposed amendments and in light of the federal parallel processing, the Agency may or may not wish to re-propose the Subdocket (B) rules. The Agency is hereby instructed to inform the Board on or before February 20, 1990, whether or not it wishes to proceed with the Subdocket (B) proposed rules under the Section 28 rulemaking process, and if so, whether or not it believes that an EcIS should be done.

This request was repeated in the Board's March 16, 1990 Second Notice Order. To date, the Board has yet to be notified by the Agency in this regard.

Consequently, insofar as all of the RACT rules and RACT rule improvements specified for Illinois in Exhibit B will continue to be promulgated on the federal level, as dictated by the settlement agreement in Wisconsin v. Reilly, the dismissal of Subdocket (B) from the Board's jurisdiction will have no effect upon whether or not any rules will be promulgated on a federal level. Therefore, this rulemaking will be subject to dismissal on June 21, 1990 unless the Board is notified by the Agency that it intends to proceed with the amendments contained within Subdocket (B).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Pollution Control Board do hereby certify that the above Order was adopted on the 7th day of June, 1990, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board