

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1992

IN THE MATTER OF:)
)
TOXIC AIR CONTAMINANTS LIST) R90-1(C)
(35 ILL. ADM. CODE 232)) (Rulemaking)

ORDER OF THE BOARD (by J.C. Marlin):

This matter is before the Board on motions filed by the Illinois Environmental Regulatory Group (IERG) and the Illinois Steel Group (ISG) on December 12, 1991 requesting the Board to determine whether an economic impact statement (EcIS) should be performed in this subdocket. The Illinois Department of Energy and Natural Resources (IDENR) filed its comments on the necessity of an EcIS on December 12, 1991 and followed with additional comments on January 16, 1992.

The motions request the Board to order IDENR to prepare an EcIS as the record presently before the Board considering reporting by emission sources, does not contain sufficient economic information concerning its costs. IERG argues that proposed reporting requirements are not exempt from the EcIS determination requirements of the Act. IERG believes that an EcIS would be beneficial and would likely demonstrate the high cost, if not technical impossibility, of the reporting requirement included at Section 232.410 of the Board's second first notice opinion and order. IERG states that it intends to submit economic information to the Board at merit hearings on the reporting requirements.

The ISG motion argues that the proposed rule will require testing and monitoring of an intensity and detail far in excess of that presently required by the Agency under its air permit programs. The ISG states that the proposed reporting requirement is not the same as that in the current air rules because as a matter of practice, the Agency has only required the identification of "specified air contaminants", and that the Agency would not consider toxic air contaminants to be specified air contaminants. The ISG states that the proposed rule will require an applicant to monitor and sample every single emission and test for the presence and amount of all 266 listed toxic air contaminants. The ISG also argues that there is no indication that USEPA will require this level of detail as part of its air toxic program.

The IDENR states that the proposed reporting requirements do not impose, in and of themselves, a significant economic burden as they are "congruent" with those reporting requirements already required for new permit or permit renewal applications. The DENR points out that the participants will have ample opportunity to supply economic information at hearing, delineating any extreme technical difficulties and unreasonable economic costs associated

with the proposed rules. At hearing, DENR argues, the Agency will also have an opportunity to explain its present practice concerning reporting by sources of specified air contaminants.

The Board begins by pointing out that its obligation under Section 27 of the Act is not to order an EcIS whenever a rule is determined to have an economic cost, as some of the participants argue, but to exercise its judgment whether such a study is necessary. Factors the Board is to consider include:

"the potential economic impact of the proposed rule, the potential for consideration of the economic impact absent such a study, the extent, if any, the board is free under the statute authorizing the rule to modify the substance of the rule based upon the conclusions of such a study, and any other considerations the Board deems appropriate. Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1027(a).

The Board may, prior to the close of the record, order such a study be performed if a substantial modification or information in the record indicates it would be advisable." Id.

The Board stands by the reasoning contained in its second first notice opinion and order that just as the Agency's air permit program could not operate without information concerning emissions, no toxic air contaminant program could either. Indeed, IERG admits that reporting may be a desirable precursor to the control phase. Though the ISG and IERG protest that the Board-proposed reporting requirement, despite its substantial similarity to that presently contained in the Board's air permitting rules, (35 Ill. Adm. Code 201.152, 157) will have an enormous economic impact upon industry, this record does not reflect it. Only the parties' briefs have suggested that an EcIS is necessary. The Board notes that it has previously separated the proposed reporting requirement into a separate subdocket so that its merit could be fully evaluated even as the list, Docket A, was being adopted. The Board recognizes that future hearings on the proposed rule may demonstrate the necessity of preparing an EcIS. The Act concedes as much. Should the record indicate its necessity the Board will order the preparation of an EcIS. to collect.

Having made its decision not to require the preparation of an EcIS at this time, the Board directs the hearing officer to allow testimony regarding the economic impact of the proposed rule to be presented in at least one hearing. It is anticipated that at that time, the Agency will present testimony as to how its current permitting process works regarding the collection of this type of information. It is also hoped that the Agency would clarify its statements as to whether toxic air contaminants will be considered "specified air contaminants" or if not, why not.

In conclusion then the Board presently denies the requests to order the preparation of an economic impact study but directs the hearing officer to schedule at least one hearing regarding the economics of the proposed reporting requirement.

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 23rd day of January, 1992, by a vote of 5-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board