

ILLINOIS POLLUTION CONTROL BOARD
September 8, 1988

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R87-37
TITLE 35, SUBTITLE F:)
PUBLIC WATER SUPPLIES)
CHAPTER 1: POLLUTION)
CONTROL BOARD (PART 608))

ORDER OF THE BOARD (by B. Forcade):

On May 5, 1988, the Chicago Association of Commerce and Industry, the Illinois Fire Chiefs Association, the Illinois Fire Inspectors Association, the Society of Fire Protection Engineers, the National Fire Sprinkler Association, and the Alliance of American Insurers collectively (hereinafter "Petitioners") filed Proposed Amendments to Part 608. This filing requested public hearings, but did not submit a petition signed by at least 200 persons. See 35 Ill. Adm. Code 102.121(a) (1987). The Petitioners intended this as an alternative to the earlier proposed amendments to this Part filed December 28, 1987 by the Illinois Environmental Protection Agency (hereinafter "Agency"). The Board conducted public hearings on the Agency's proposal on May 25 and 26, 1988. The Petitioners and various other members of the regulated community and general public participated in both days of public hearings.

By its Agency Response of June 15, 1988, the Agency objects to consideration of the Petitioners' proposal as "a formal 'counter-proposal,'" and would have the Board consider this document as a public comment. The Agency asserts the Petitioners' filing is untimely. The Petitioners filed a Reply on June 27, 1988, together with a motion to file instanter. The Petitioners expressed concern that consideration of their proposal "only as a public comment" would lead to a disregard for this document by the Board. They point out that they are at liberty to file a separate petition for rulemaking under a new docket, which they assert would "create inefficiency." The Petitioners believe filing their proposal as part of this docket is "the most direct and efficient route to present their concerns."

The Board initially notes that it has delayed dealing with the Petitioners' proposal and the Agency response for over one month. The Board received verbal representations that the Petitioners and the Agency would meet on or about July 28, 1988 in an attempt to seek some consensus. These included an indication that the Agency would shortly thereafter file an amended proposal for rulemaking. No document on the record

reflects that this occurred. This delay has suspended the closing of the merit portion of the rulemaking.

Section 28 of the Environmental Protection Act, Ill. Rev. Stat. ch. 111 1/2, par. 1028 (1988), and Section 102.120 of the Board's procedural rules, 35 Ill. Adm. Code 102.120 (1987), provide that any person may file a proposal for rulemaking. This Section of the Act and Section 102.121(a) of the Board's rules both provide for public hearings on a rulemaking proposal submitted by the public accompanied by a petition bearing 200 signatures. They also vest discretion in the Board in the conduct of its public hearings. Therefore, it is wholly within the discretion of the Board how it will dispose of the Petitioners' proposal.

The Board finds that the Petitioners' proposal is not plainly devoid of merit, it is supported by an adequate statement of reasons within its context, and it did not concern a matter on which the Board had conducted public hearing within the six months prior to its date of filing. Rather than docket the proposal with an independent number and consolidate it with this matter, the Board will consider the Petitioners' and the Agency's proposals together. No prejudice or inefficiency would result at this time. The Board will not, however, set this matter for additional hearings at this time because the public hearings held 21 days subsequent to the filing of the Petitioners' proposal did consider this subject matter. Further, no person has subsequently requested additional hearings.

The Board notes that it is Board rules which now undergo revision, and it is wholly within the discretion of the Board how it proceeds to decision. The Board also observes that the status of the Petitioners' proposal as a rulemaking proposal or a public comment is immaterial in this instance and at this time. The Board will consider a public comment for what it offers, and the Board will decide on rules and regulatory language that is best supported by the record and which best suits the apparent needs. This is notwithstanding the language of the original proposal or the status of the chosen language "only as a public comment."

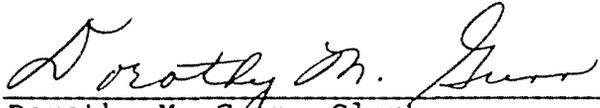
Finally, it is to be preferred that members of the affected public submit "counterproposals," rather than mere assertions of dissatisfaction with a proposed rule. Alternative regulatory language is often the best form of criticism. It certainly gives the Board more with which to work, and in this proceeding it aids the Board in assessing the substance of both the Agency's and Petitioners' positions. It will aid the Board in selecting a regulatory structure that the Board feels is most acceptable.

The Petitioners' proposal of May 5, 1988 is accepted as filed. The Board will schedule no additional hearings regarding

Part 608 at this time. The merit portion of this proceeding will close September 23, 1988. Any person desiring to supplement this record is hereby directed to submit any filings prior to September 21, 1988 for consideration at the September 22, 1988 Board meeting. The Board will await notification from the Department of Energy and Natural Resources before scheduling any additional activity in this matter.

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 8th day of September, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board