

ILLINOIS POLLUTION CONTROL BOARD
January 11, 1990

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

ORDER OF THE BOARD (by J. Marlin):

On January 2, 1990, the Agency filed this proposal to list toxic air contaminants. Proposal by the Agency, and promulgation by the Board, of such a list is required by Section 9.5(c) of the Act. The Board has docketed this proposal, and contemplates expeditious scheduling of a public hearing as required by Section 28 of the Act. For reasons given below, the proposal is not, however, today "accepted for hearing".

A preliminary review of this proposal by the Board and its staff reveals that the proposal does not conform to certain content and drafting requirements of the Illinois Administrative Procedure Act and implementing regulations adopted by the Secretary of State and the Joint Committee on Administrative Rules (as codified at Illinois Administrative Code Parts 100 et seq. and 200 et seq.). Deficiencies range from what some may consider to be picayune, i.e. failure to follow long-prescribed typing formats for indentations and Section-numbering, to those which may greatly affect the substantive content of the rule.

Examples of items in the latter category include 1) a proposed definition of carcinogens as contaminants so classified by any one of four bodies at any time without indication of whether and where such lists may be publicly available (proposed Section 232.310), 2) proposed procedures for scoring chronic toxicity which apparently rely on procedures contained in textbooks and journal articles which cannot be incorporated into a rule by reference and whose availability is questionable (e.g. a 1947 journal article) (proposed Sections 232.110 and Table 1). The Board notes that any uncertainty as to the identity of the contaminants within the scope of the rule create uncertainties as to the scope of the reporting requirements proposed.

In some prior proceedings, the Board has attempted to correct similar deficiencies by putting the proposal in a format minimally acceptable for publication in the Illinois Register and then addressing other technical matters at hearing. This process has not worked well in complex proceedings. It inevitably leads to amended proposals which require additional hearings and

occasional re-noticing. In the instant matter, the Board believes that fairness and judicious use of resources dictate that a refined proposal be developed prior to any hearing.

The Board accordingly directs its Hearing Officer, in consultation with its Scientific/Technical Section to prepare a document specifying the deficiencies in the proposal, which is to be transmitted to the Agency and entered into the record in this proceeding. The Hearing Officer shall schedule a pre-hearing conference pursuant to Section 27(e) to discuss revisions to the Agency proposal with the Agency if it appears that such effort would expedite the filing of a sufficient proposal.

The Board also notes that Section 9.5(c) of the Act exempts rulemakings pursuant to that Section from the economic impact requirements of Section 27(b). Since enactment of Section 9.5(c), additional economic impact requirements have been added to Section 27(a) by P.A. 85-1048 (also known as SB1834). The Board directs the Agency to address the issue as to how Section 9.5(c) should be construed in light of these subsequent amendments to Section 27.

After receipt of Agency filings responsive to this Order, the Board will, by Order, again consider 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 11th day of January, 1990, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board