

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1985

IN THE MATTER OF:)
)
TITLE 35: ENVIRONMENTAL PROTECTION) R82-2
SUBTITLE I: ATOMIC RADIATION)
CHAPTER I: POLLUTION CONTROL BOARD)
PART 1000: RADIATION HAZARDS)

Resolution in Response to JCAR Objection.

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

This matter comes before the Board upon a letter dated September 19, 1985, to the Board from the Joint Committee on Administrative Rules (JCAR) informing the Board that JCAR has objected to this rulemaking. This Resolution and Order constitutes the Board's formal refusal to modify the rules in response to that objection pursuant to Section 7.07 of the Administrative Procedure Act (APA). A notice of refusal to modify will be timely filed with the Secretary of State for publication in the Illinois Register.

JCAR's September 19, 1985, letter reads, in pertinent part, as follows:

The Joint Committee objects to Section 1000.403 of the Pollution Control Board's rules entitled "Radiation Hazards"; 35 Ill. Adm. Code 1000, because the Board has failed to include within the referenced section the proper standards, pursuant to Section 4.02 of the Illinois Administrative Procedure Act, by which it will exercise its discretionary power.

* * *

Section 1000.403 states that "[o]perations covered by this subpart shall be conducted in such a manner as to provide reasonable assurance that" doses do not exceed a specified level and that the total quantity of radioactive material entering the environment is kept to a certain minimum.

* * *

Section 4.02 of the Illinois Administrative Procedure Act (IAPA) (Ill. Rev. Stat. 1983, ch. 127, par. 1004.02) provides that "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely

and clearly as practicable under the conditions, to inform fully those persons affected."

* * *

It would appear that the Board could incorporate much more of what determines that a "reasonable assurance" has been provided, specifically, the information obtained from the USNRC. The Board should be able to inform operators of what they will have to do to meet their obligation to operate in such a way as to provide a "reasonable assurance" that radiation levels are kept down.

* * *

Therefore, the Joint Committee objects to Section 1000.403 of the Pollution Control Board's rules entitled "Radiation Hazards"; 35 Ill. Adm. Code 1000, because the Board has failed to include within the referenced section the proper standards, pursuant to Section 4.02 of the Illinois Administrative Procedure Act, by which it will exercise its discretionary power.

JCAR believes, based on discussion with DNS, that DNS (and the Board, presumably) will determine whether "reasonable assurance" has been provided by analyzing certain information provided by the operator "with the help of a manual developed by the USNRC [United States Nuclear Regulatory Commission]." The Board was, therefore, asked "to include in the rule the standards, including the manual, and the process used to determine whether that assurance is reasonable."

The Board cannot modify the rule as requested by JCAR this late in the proceeding. The "manual" is not in the record, nor does the Board have a copy of it. It has not been the subject of hearings, nor does the Board have any reason to believe that it contains "standards" or a "process" which would aid the regulated community in attaining or maintaining compliance with the adopted rules. Furthermore, under Section 6.02 of the APA, the Board has the authority to incorporate by reference "regulations or rules of an agency of the United States." Therefore, the Board could have simply incorporated these rules by reference, thereby avoiding any controversy over their wording. Yet, because the Board decided to fully set forth those rules to give better notice to the regulated community of what the requirements are, JCAR has objected to them. In a subsequent rulemaking the Board can, and has, considered modification of rules to meet JCAR's objections, but the record in this case demonstrates that the regulated community has been subject to the same rule on the federal level for several years, understands it and is in compliance with it. The Board, therefore, sees no reason to go through such a procedure when it appears that little or nothing

would be gained, and thus refuses to modify the rule based on JCAR's objection.

Finally, the Board notes that in JCAR's September 19, 1985, letter, JCAR indicates that the Board has agreed to delete the phrase "conducted by or for such persons" from Section 1000.501(a)(b) which has been renumbered as Section 1000.501(f) and reads as follows:

All persons subject to this Part shall submit to the Department, with respect to any material or facility permitted or licensed by the NRC or for which an NRC permit or license is sought:


- f) All data, records, and reports submitted to the NRC in connection with determining or predicting radiation levels in air in unrestricted areas or the type or amount of radioactive materials emitted into air conducted by or for such persons.

If the Board were to delete the recommended language, the set of documents which would be required to be sent to DNS would be enlarged to include records, data and reports which were conducted by or for persons other than the person submitting the material to the NRC, thus imposing a larger and more burdensome obligation on the regulated community. Furthermore, the Board finds the language to be sufficiently understandable in that "such persons" refers to "persons subject to this Part" in the first paragraph of the section. Thus, while JCAR finds this wording confusing, the Board finds it to be clear and finds JCAR's recommended change to be a substantive alteration of the rule. The Board will, therefore, not make that change.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Resolution and Order was adopted on the 24th day of October, 1985, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board