

ILLINOIS POLLUTION CONTROL BOARD  
April 10, 1986

IN THE MATTER OF: )  
 )  
VOLATILE ORGANIC MATERIAL ) R82-14  
EMISSIONS FROM STATIONARY )  
SOURCES: RACT III )

INTERIM ORDER OF THE BOARD (by B. Forcade):

During the recent course of this proceeding, certain procedural issues have arisen which necessitate Board action. On November 25, 1985, the Illinois Environmental Protection Agency ("Agency") proposed to amend 35 Ill. Adm. Code 215.207, the Internal Offset rule. The proposed amendment would change the method of calculating volatile organic material content of coatings from a volume based method to a solids based method for purposes of the internal offset rule. At hearings held on December 2 and 3, 1985, certain facilities that would be impacted by the proposed amendment were identified. At the March 20 and 21, 1986, hearings two "site-specific" amendments to proposed Section 215.207 were proposed by 3M and Allied Tube and Conduit. Additionally, on March 13, 1986, the Agency filed a Motion to Amend 35 Ill. Adm. Code 215.204 which would exclude non-photochemically exempt solvents from the calculation of coating emission limitations. At hearing on March 20 and 21, 1986, objections were made regarding the propriety of allowing this new amendment within this ongoing proceeding and the adequacy of notice of this new proposal to the regulated community. No evidence regarding proposed Section 215.204 was offered by the Agency at those hearings, due to time constraints.

AT the March 20 and 21, 1986, hearing, the Hearing Officer and attending Board Member commented on the increasingly confusing nature of the proceeding and requested participants to comment to the Board regarding these procedural issues. On April 3, 1986, the Chicago Association of Commerce and Industry and Duo-Fast Corporation filed an Objection to the Agency's Motion to Amend 35 Ill. Adm. Code 215.204. The objection, in brief, argues that the proposed amendment to Section 215.204 modifies the key provision setting RACT for a large number of stationary VOM sources; that the proposed amendment may have wide-reaching and highly significant impact on many manufacturers in Illinois; that because the amendment has been proposed at this late stage in an ongoing rulemaking many potentially impacted manufacturers have no notice and no opportunity to participate; and therefore, the Agency's proposed amendment should be docketed as a new and separate rulemaking proceeding.

On April 7, 1986, the Agency submitted Comments to the Board Regarding Proposed Amendments for Consideration in This Proceeding. In its comments, the Agency argues that the proposed amendments to Section 215.204 grew out of the R82-14 proceeding and are interrelated with proposed Section 215.207. Therefore, the best course of action is to retain proposed Section 215.204 within the context of R82-14. Regarding the issue of "site-specific" proposals within the context of a general regulatory proceeding, the Agency notes the recent court opinion in Central Illinois Public Service Company v. Illinois Pollution Control Board, No. 4-85-0602, slip op. 3/31/86, 4th District. That opinion holds, in pertinent part, that the Board lacks authority to either adopt or reject "site-specific" regulatory proposals where there are no specific criteria or levels of justification for such relief within the general rule from which relief is sought. The Agency argues that since the Board has not provided these criteria in the context of Section 215.204, 3M's and Allied Tube and Conduit's "site-specific" proposals may be beyond the scope of the Board's authority. In the alternative, the Agency comments that the "site-specific" proposals and the Agency's proposed Section 215.204 could be separately docketed in order to avoid delay in proceeding with the proposed amendment to Section 215.207.

The Board, through this Order, notifies and provides an opportunity for comments from all R82-14 participants regarding the procedural disposition of the foregoing matters. Specifically, the Board requests comments regarding:

- 1) The advisability of separately docketing the proposal to amend Section 215.204;
- 2) The advisability of separately docketing "site-specific" proposals related to proposed amendments to the Board's general rules;
- 3) The advisability of allowing "site-specific" proposals within the context of a general regulatory proceeding; and
- 4) The impact of the CIPS v. IPCB opinion on the Board's authority to consider "site-specific" relief.

The Board will receive comments in response to this Order until Friday, May 2, 1986. The Board plans to take action regarding these matters at the May 8, 1986, Board meeting.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 10<sup>th</sup> day of April, 1986, by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board