

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1981

IN THE MATTER OF:

PROPOSED AMENDMENTS TO CHAPTER 2:)
AIR POLLUTION CONTROL RULES AND)
REGULATIONS, NONATTAINMENT AREA PERMIT) R81-16: INTERIM RULE
REGULATIONS PURSUANT TO §9.1 OF THE)
ILLINOIS ENVIRONMENTAL PROTECTION ACT.)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

On September 4, 1980, the Illinois Environmental Protection Act (Act) was amended to add §9.1(d) which mandates Board promulgation of a permit program meeting the requirements of §173 of the Clean Air Act by October 1, 1981. (Section 173 lists the requirements of the permit program for the construction and operation of new or modified major stationary sources in nonattainment areas which must be included in the State Implementation Plan.) The Board received a regulatory proposal for this mandated rule-making and the related Prevention of Significant Deterioration preconstruction requirements (See Section 165 of the Clean Air Act) from the Illinois Environmental Protection Agency (Agency) on May 1, 1981. The Agency proposal was accepted for hearing and given the docket number R81-16 at the May 14, 1981 Board meeting.

Since even under optimal conditions complete compliance with Title VII (including an Economic Impact Study) and the Administrative Procedure Act rulemaking requirements consumes a minimum of 12 months, the Board finds that it was impossible to promulgate a new permit program pursuant to these procedures before the October 1, 1981 date. Given these constraints, the Board believes it is in the best interest of the people of the State and the affected sources to promulgate a permit program at this time which will retain the "status quo" until a thorough review of the R81-16 permit program proposal is completed. This interim rule-making was intended to meet the statutory October 1, 1981 deadline. Although belated, the Board is adopting the existing permit program, that is, the Agency's "Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas," to satisfy §9.1(d)'s mandate for Board rules for permitting sources regulated under §173 of the Clean Air Act. In substance, the existing rules would be in effect until October 1, 1982 under §9.1(e) of the Act, even if this interim rule were not promulgated. Therefore, the Board finds this action will have no economic or environmental impacts beyond those created by §9.1(e), and that, given the alternatives, this course of action will result in the least disruption of the existing program and the most thorough review of the new regulations.

Since originally proposed by the Board's Order on July 23, 1981, the second paragraph of the Order has been deleted. Nevertheless, the federal regulations relating to §111, 112 and 173, and amendments thereto, will supersede the effective rules in Illinois to the extent that compliance with the Illinois rules in this interim would result in a violation of Section 9.1(f) of the Act. Section 9.1 of the Act, and more specifically Sub-section 9.1(f), leaves little, if any, room for a different interpretation. Otherwise, a permit applicant subject to a conflicting permit condition or requirement, in an effort to satisfy it, would be forced to violate the federal provision, as well as Section 9.1(f)(1).

This Order does not in any way affect the ongoing proceeding in R81-16.

ORDER

Part XI of Chapter 2: Air Pollution Control Rules and Regulations is hereby adopted, entitled "Permit Program for the Construction and Operation of New or Modified Major Stationary Sources in Nonattainment Areas." Rule 1101 of Part XI is hereby promulgated as follows:

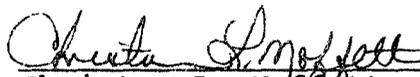
Rule 1101 Permit Issuance

The Illinois Environmental Protection Agency shall issue permits pursuant to the Agency's "Rules for Issuance of Permits to New or Modified Air Pollution Sources Affecting Nonattainment Areas" as in effect on the date of this rule, provided that no permit condition or requirement is more stringent than required by the Clean Air Act, the Act or this Chapter.

This rule shall remain in effect until superseded by the adoption of permanent rules in R81-16 or until October 1, 1982, whichever is earlier.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 17th day of December, 1981 by a vote of 4-0.



Christan L. Moffett, Clerk,
Illinois Pollution Control Board