

ILLINOIS POLLUTION CONTROL BOARD
March 27, 1990

IN THE MATTER OF:)
)
RACT DEFICIENCIES -) R89-16
AMENDMENTS TO 35 ILL. ADM.) (Rulemaking)
CODE PARTS 211 AND 215)

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

This matter comes before the Board upon its own motion. On March 16, 1990, the Board adopted a Proposed Opinion and Order in this docket. That Opinion and Order adopted some portions of the Agency's proposed amendments for Second Notice submission to the Joint Committee on Administrative Rules (JCAR), and deferred additional consideration on other portions to a previously opened subdocket (B). In that Opinion, the Board noted the relationship between this rulemaking proceeding and the Wisconsin v. Reilly settlement agreement. Further, the Board noted its willingness to proceed in accordance with the timeframes set forth in Exhibit C of the settlement agreement, although the Board was not a party to that proceeding and was not directly consulted on "milestone dates." To date, the Board has satisfied each and every milestone date set forth in the settlement agreement.

Subsequent to the adoption of the Second Notice Order, the Board discovered that the United States Environmental Protection Agency ("USEPA") filed a motion in the United States District Court for the Eastern District of Wisconsin on March 13, 1990, for extension of time to promulgate the regulations that were to be adopted by March 18, 1990. USEPA states in the memorandum in support of its motion that the RACT rulemaking is very complex, and raises a number of technical and legal issues. Further, the Affidavit of Joseph Paisie contains the following statement:

Under the terms of the settlement agreement signed by the parties and entered by the Court in this case, [US]EPA was required to propose as federal measures certain RACT rules for Illinois by December 31, 1989. EPA is further obligated to promulgate final rules by March 18, 1990 if Illinois fails to meet any of a number of specified milestones for promulgation of the RACT rules as state measures. See Settlement Agreement, paragraph 25(a). Illinois has missed a number of those milestones for certain rules. (Affidavit, p. 2). (Emphasis added.)

Based upon these and other statements, USEPA requested an extension of time until June 8, 1990 to adopt the rules which were to have been adopted by March 18, 1990.

In light of the short timeframes the Board was given in this proceeding, the Board questions what effect, if any, this motion has or may have upon the milestone dates of Exhibit C of the settlement agreement which relate to Board actions. In other words, if USEPA's motion is granted, will the Board also be allotted additional time to allow for the submission of evidence to support the proposed amendments? The Board today requests comment from persons on the notice list, specifically the Illinois Environmental Protection Agency and USEPA, on this question.

The Board will withhold the filing of Second Notice with the Joint Committee on Administrative Rules until these responses are submitted. The Board notes that once Second Notice is filed the substance of the rule cannot be altered except in response to a JCAR question or suggestion. By delaying the filing of Second Notice, the Board preserves the ability to alter the substance of the proposal if additional time is afforded and if such alteration is determined to be appropriate.

The Board is also persuaded to withhold Second Notice filing in light of the Board's recent experience in R88-30, Limits to Gasoline Volatility. In that proceeding USEPA stated at hearing and in post-hearing comments that it supported the proposed amendments, but then USEPA filed a motion to reconsider the Board's rulemaking, requesting certain language changes, after the Board adopted the regulation and formally filed it with the Secretary of State. Because those regulations specifically applied to the 1990 ozone season, the Board was able to address the merits of USEPA's motion only by using emergency rulemaking methods.

The Board notes that under the current milestone dates, the Board has until May 25, 1990, to adopt the amendments in this proceeding. JCAR possesses 45 days in which to review Second Notice submissions. JCAR has not as yet scheduled its May meeting. Thus, the Board cannot determine by what date its Second Notice submission must be filed. As a result, the Board can only count back 45 days from May 25, 1990 to determine approximately when the Second Notice must be filed. Consistent with this approach, the Board believes it must file Second Notice no later than April 10, 1990, which is a Tuesday. As a result, the Board will accept responses to this Order which are **received by the Board no later than 4:30 p.m. Friday, April 6, 1990.**

In addition to the question posed above, the Board also requests comment clarifying how in fact "Illinois has missed a number of those milestones for certain rules". The Board is aware of no milestone dates that it has "missed" pursuant to the Wisconsin settlement agreement. Exhibit C of that settlement agreement sets forth the following schedule:

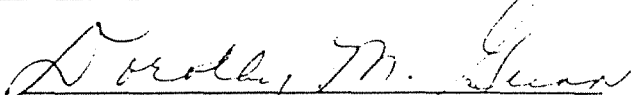
EXHIBIT C	
<u>Action</u>	<u>Deadline</u>
Illinois EPA proposals filed	9-30-89

Illinois Pollution Control Board decides EcIS question and publishes first notice	12-22-89
Pollution Control Board holds hearing and publishes second notice	3-16-90
JCAR completes action and PCB adopts final rule	5-25-90

Thus far, these milestone dates have been met. The Agency filed its proposal on September 29, 1990. On October 20 (13 Ill. Reg. 16285) and 27 (13 Ill. Reg. 16645), 1990, the Board published first notice. On October 27, 1990, the Board decided that an Economic Impact Study (EcIS) would not be prepared. Hearings were held on December 7, 8, 14, 15, 1989 and January 19, 1990. The Board adopted and published second notice on March 16, 1990.

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 27th day of March, 1990, by a vote of 5-0.


Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board