

ILLINOIS POLLUTION CONTROL BOARD
October 23, 1986

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

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

This matter comes before the Board on an October 2, 1986, Illinois Environmental Protection Agency ("Agency") motion for reconsideration of the September 11, 1986, Interim Opinion and Order separately docketing the Agency's proposed redefinition of volatile organic material ("VOM") from the R82-14 docket. Reconsideration is granted and the Board's Interim Opinion and Order of September 11, 1986, is affirmed.

The Agency's first argument on reconsideration states that the Board's action is "clearly violative of its own procedural rules and due process and fundamental fairness principles," as the Agency had inadequate notice and opportunity to brief the issue, that the comment period was still open, that the Agency had planned to submit comments on this issue, and that due process requires "immediate notification from the Board to the attorneys involved" in the circumstances.

In response, the Board believes its action was proper, that adequate notice was provided, and that no due process, fundamental fairness or procedural rule requirements were violated. The action taken on September 11, 1986, was noticed on the agenda and thoroughly discussed at the August 28, 1986, Board meeting. Both the August 28, 1986, and the September 11, 1986, meetings were regularly scheduled and noticed, were open to the public and were audio-taped by an agent of the Agency who prepared unofficial minutes of each meeting for use by the Agency. These minutes are filed with the Board. The Board sent all persons on the regulatory notice list a copy of the order via first class mail on September 11, 1986.

The Agency assumes that the Board's September 11, 1986, Order was prompted by comments from the Printing Industry and that it was inappropriate to take the action at issue before the close of the comment period. In response, the Board restates that while the Printing Industry had raised concerns about the scope and impact of the Agency's proposal, the action was taken on the Board's own motion. The record of the April 1 and 2, 1986, hearings reflects the Board staff's concerns about the scope and impact of the Agency's proposed redefinition of "VOM" from its inception. Furthermore, while it is true that the

comment period was still open, the scope of the comments were specifically limited by the hearing officer to be responsive to previous comments (R82-14, Hearing Officer Order, July 23, 1986). The Agency, itself, had requested this additional time period for the specific purpose of reviewing and commenting on a stack test report from World Color Press (R82-14, Hearing Officer Order, August 25, 1986). The record in this proceeding clearly illustrates that the participants have had more than adequate notice and opportunity to comment and brief issues (R82-14, Hearing Officer Orders, dated 5/29/86, 6/24/86, 7/23/86, 8/25/86, documenting requests for extensions of comment period by both the Agency and the Printing Industry). Whether or not a participant is cognizant of the notice provided and takes advantage of these comment opportunities does not raise due process or fundamental fairness concerns. The Agency makes no specific citation to the Board's procedural rule allegedly violated.

As a final note regarding the issues of notice and opportunity to comment, the Board has granted reconsideration and by so doing has reviewed the Interim Opinion and Order of September 11, 1986, and in light of the Agency's position, as expressed in its motion for reconsideration.

The Agency's second general argument on reconsideration, to the extent it can be deciphered, is that "separation is simply not possible as no record will then remain from which to make a decision on these rules." The Board is confused by this argument but will attempt to respond or clarify the issue of the record. The record in R82-14 will remain unchanged and intact. The new docket assigned for the Agency's proposed redefinition of "volatile organic material" currently contains nothing except the Board's Interim Opinion and Order of September 11, 1986, separating out the proposed redefinition for R82-14 and, thereby, creating a new docket, R86-37. It will be the Agency's burden, as proponent, to create a sufficient record for Board action on the proposed redefinition. Through the notice, hearing and comment process, the impact of the Agency's proposal will be ascertained.


The Agency, in its motion for reconsideration, states that it always intended to regulate ink oils, that the printing industry knew this, and that the EcIS evaluated the control of ink oils. The Board does not disagree with these representations. However, this argument does not address the reasons why the Board separately docketed the Agency's most recent proposal: the Agency's proposal changes, in a broad manner, a fundamental definition found throughout Part 215, potentially causing unanticipated impacts. Because of the nature of the proposal and the unknown impact, notice, hearings and economic evaluation have to be performed. Thus, a record for decision which will document the impact must be created. The Board has chosen to docket this matter as R86-37. The issues regarding the heatset web offset

printing category will be resolved in the R82-14 docket.

For the above stated reasons, the Board reaffirms its Interim Opinion and Order of September 11, 1986, in the above-captioned matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 23rd day of October, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board