

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1992

IN THE MATTER OF:)
TOXIC AIR CONTAMINANTS LIST,) R90-1(C)
REPORTING REQUIREMENTS) (Rulemaking)
(35 ILL. ADM. CODE 232))

ORDER OF THE BOARD (by J. C. Marlin):

On November 5, 1992, the Illinois Environmental Regulatory Group filed a motion to continue hearing in this matter. On November 6, 1992, the Illinois Environmental Protection Agency (Agency) filed a motion to continue hearing and other related motions. On November 12, 1992 the Illinois Steel Group (ISG) filed a response to the Agency's motions. The motions for continuance were granted in a Hearing Officer order on November 20, 1992. Today, the Board is taking action on the other related motions made by the Agency.

In its motion, the Agency moves the Board to proceed to adopt a first notice opinion in this docket and to exclude new source reporting as a subject of hearing in this docket. (Mot. at 1.) The Agency urges the Board to do so based upon the fact that, "the docket is ripe for consideration". (Mot. at 2.) In addition, the Agency states that new source reporting should not be an issue in this docket and that the language requiring new source reporting should be returned to the rule without issue. (Mot. at 2.) The Agency argues that new source reporting should be excluded as a subject of hearing because none of the participants in Docket A objected to it. (Mot. at 2.)

In its response, ISG states that it does not believe that the Board should go to first notice with the reporting requirements docket at this time. (Resp. at 1.) ISG argues that there is considerable uncertainty regarding reporting requirements and a possibility of a wide range of regulatory responses to the proposal. (Resp. at 1.) The ISG argues that in order to avoid issuing several first notice orders, the Board should hold at least one hearing to determine whether the negotiations between interested parties has or will develop into a consensus. (Resp. at 1.)

The ISG also states in its response that it "strenuously" objects to the Agency's motion to exclude new source reporting from discussion in Docket C. (Resp. at 2.) ISG argues that the Agency misstates the position of at least ISG when it states that no objections were made to reporting of new sources. (Resp. at 2.) ISG points out that under the language in the original first notice, new sources were required to identify toxic air contaminants and potentially toxic air contaminants. (Resp. at 2. See also, In The Matter of: Toxic Air Contaminants List,

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First Notice Order and Opinion of the Board (April 26, 1990), PCB R90-1.) At second first notice, the language was changed. (See, In The Matter of: Toxic Air Contaminants List, Second First Notice Order and Opinion of the Board (September 26, 1991), PCB R90-1.) The second first notice language would require new sources to report the nature, source and quantity of toxic air contaminants (Resp. at 2). ISG argues that it is incorrect to state that parties did not object to the second first notice language since this was never part of any proposal¹.

The Board agrees with ISG that uncertainty regarding reporting requirements and a possibility of a wide range of regulatory responses to the proposal does exist. The Board is not persuaded to go to first notice on this proposal by the Agency's argument that this docket is "ripe for consideration". The Board believes that it is in the best interest of everyone involved to allow the interested parties time to negotiate and to address one another at hearing before moving to first notice on this proposal. Therefore, the Board denies the Agency's motion to initiate first notice publication in the Illinois Register.

In addition, the Board will not exclude new source reporting as a discussion topic at hearing. The Agency's argument that no interested party objected to the new source reporting requirements mischaracterizes the facts. No hearing was ever held on the second first notice proposed language for new source reporting requirements. Instead, reporting requirements were severed from docket A and moved to docket C for later action. As ISG points out, after the first, first notice language was changed, no opportunity for objection to the new language was ever presented. The Board believes that all interested parties deserve an opportunity to input their opinions on new source reporting in this proceeding. Therefore, the Board denies the Agency's motion to exclude new source reporting as a subject of hearing in this docket.

Finally, In its response, ISG moved the Board to reschedule the dates for pre-filing of testimony and the hearing. (Resp. at 2.) In its motion, the Agency notified the Board of its intention to testify at any hearings which are set in this docket. (Mot. at 2.) The Hearing Officer and the Board will determine the timing and sequence of further actions in this docket upon receipt of the status report due to be filed on or before January 30, 1993, pursuant to the Hearing Officer order of November 20, 1992.

¹The Board notes that fifty-six days after the Board adopted its second first notice, reporting requirements were severed from the docket and placed into Docket C. Since Docket C was created, no hearing has been held on the language proposed in the second first notice order.

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Again, the Board hereby denies the Agency's motion to initiate first notice and to exclude new source reporting as a subject of hearing in R90-1(C).

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 17th day of December, 1992, by a vote of 7-0.

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

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