

ILLINOIS POLLUTION CONTROL BOARD  
November 21, 1991

IN THE MATTER OF: )  
TOXIC AIR CONTAMINANTS LIST ) R90-1(A)  
(35 Ill. Adm. Code 232) ) R90-1(C)  
 ) (Rulemaking)

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

This matter is before the Board on a Motion to Sever Subpart D of Second First Notice Proposed Rule filed by the Illinois Environmental Regulatory Group ("IERG") on November 6, 1991. The Motion concerns the Board's second first notice proposal of the Air Toxics List, R90-1, published in the Illinois Register on October 10, 1991. The public comment period of 45 days following publication expires December 2, 1991. On November, 11, 1991 the Illinois Chapter of the Sierra Club, the Coalition for Consumer Rights and the Chicago Lung Association filed a response to the motion. The Illinois Department of Energy and Natural Resources filed comments concerning the motion on November 15, 1991.

The motion requests the Board to sever the reporting requirements for existing sources found in Subpart D of the second first notice publication and place such rules in a separate docket. Thereafter, IERG requests that the Board make a determination that an economic impact statement ("EcIS") should be prepared in the new docket.

IERG contends that Subpart D, as proposed by the Board, goes beyond the promulgation of a list of toxic air contaminants and thus is outside the scope of the EcIS exemption contained in Section 9.5(c) of the Act. Section 9.5(c), IERG argues, exempts only the rulemaking proceeding to promulgate this list from the EcIS requirement. Rather, IERG argues, the list is, as the Board put it in its Opinion in R90-1 of September 26, 1991, a "precursor of the control phase." Because subpart D of the proposed rule is not part of a list and not subject to the EcIS exemption, IERG argues that the Board must determine whether an EcIS should be performed as mandated by Section 27(a) of the Act.

IERG submits that should an EcIS determination be made, the lack of economic information in the record will necessitate preparation of an economic impact statement. The Board, in its September 26, 1991 Second First Notice Opinion and Order noted that under the present permitting rules the nature and type of information the Board wished to see reported was already required. The proposal reinforced these regulations by making them part of the air toxics rules as well.

The Board's Opinion and Order also noted that similar information would be required under The Clean Air Act Amendment as well. IERG disagreed "that the current practices and projected requirements pursuant to the Clean Air Act Amendments will in any way approach the rigor of the absolute reporting requirements proposed by the Board under Subpart D." IERG states that it will explain the difference at hearing.

IERG also submits that had the current proposal in Subpart D been under prior consideration by the Board, IERG would have presented detailed information on both the costs of reporting and the technical feasibility, or infeasibility, of such reporting. IERG stated that it intended to present such information to the Board at any future hearing on Subpart D. IERG submitted that such substantive reporting requirements would impose a "high cost" and in some cases be technically impossible.

The Board quotes from its Opinion of September 26, 1991 regarding its reasoning in proposing this requirement:

Industry's concern about reporting requirements is cost. The Board notes that current permitting regulations require certain information to be submitted by applicants for construction and operation permits. A source must identify, as part of informational requirements for permitting, "the nature, specific sources and quantities of controlled and uncontrolled air contaminants. See 35 Ill. Adm. Code 201.152, 201.157. For purposes of these sections, "air contaminants" is defined as "any solid, liquid or gaseous matter...capable of being released into the atmosphere." 35 Ill. Adm. Code 201.101. Under these definitions toxic air contaminants would constitute a reportable "air contaminant" likewise. Similarly, under the new Federal Clean Air Act Amendments, existing major and area sources which must obtain permits for defined hazardous air pollutants (HAPS) must also submit information regarding their emissions of these contaminants. 42 USC 7412. Reporting by existing sources, then, is not so much a question of if as it is a question of when the requirement is satisfied.

At hearing as to the potential costs of such a reporting requirement. Industry representatives testified that reporting would carry associated costs but did not supply any specifics. Post-hearing public comments from industry groups did not contain any new information which enlightened the Board.

The Board has altered the Agency's proposed reporting requirement to include reporting by existing sources at time of permit renewal. In parallel with the language of existing regulations, this reporting includes the "nature, specific source and quantity" of each TAC. In this manner, the information on emissions of toxic air contaminants by existing sources will be supplied as current permits are renewed over a five year period. The Board inserts this as an affirmative requirement in these regulations to ensure that the information will not be omitted in the future. (Opinion, pp. 10-11)

The Board's second first notice proposal is also supported by the response filed by the Illinois Chapter of the Sierra Club/Coalition for Consumer Right/Chicago Lung Association. (PC

42) These groups state that they "remain convinced that reporting of emissions data is essential to establish an effective toxic air contaminants program". They do not oppose the motion on the belief that the requirement is not essential to the listing process. They urge the Board, however, to consider promulgation of the reporting requirements prior to the Agency's submission of the control program.

The Illinois Department of Energy and Natural Resources' comments echo the reasoning contained in the Board's Opinion and Order of September 26, 1991. IDENR also concludes that because the reporting requirements already exist in Agency permitting regulations, "Subpart D would not impose any economic burdens...which are not already imposed." (PC 43, p.2)


The Board decides today to remove Subpart D from the second first notice proposal and to place it in separate subdocket. The Board opens such docket today, R90-1(C). The Board believes removal of the reporting requirement will allow quick adoption of the toxic air contaminants list while preserving the issue of reporting by existing sources. These issues may be addressed in any hearings held under this subdocket. The Board takes this action to clear any remaining procedural impediment to the lists' adoption. No finding is made as to the necessity for an ECIS.

Having considered all of the above, the Board decides today to give notice that the reporting requirements contained in Subpart D of the second first notice publication will be removed at second notice. The requirements of Subpart D will be removed to a subdocket, R90-1(C), which the Board opens today. Docket B has been previously reserved for the Agency's proposal concerning environmental effects.

IT IS SO ORDERED.

J. D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 21<sup>st</sup> day of November, 1991 by a vote of 5-1.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board