ILLINOIS POLLUTION CONTROL BOARD
June 20, 1991

IN THE MATTER OF:	)	
	)	
RACT DEFICIENCIES IN THE	)	
CHICAGO AREA: AMENDMENTS	)	R91-7
TO 35 ILL.ADM.CODE PART 215	)	(Rulemaking)
AND THE ADDITION OF PART 218	)	

PROPOSED RULE. SECOND NOTICE.

SUPPLEMENTAL OPINION OF THE BOARD (by J. Theodore Meyer):

On June 11, 1991, this Board proposed, for second notice, the rules in this docket. The Board issued an opinion setting forth the procedural history of this rulemaking, and ruled on the Illinois Environmental Protection Agency's (Agency) motion to amend its proposal. Because of the short time between the filing of the Agency's motion to amend its proposal and Board action, the opinion issued on June 11 did not respond to the public comments received on this proposal. The Board stated that it would issue a supplemental opinion. This supplemental opinion will briefly discuss the background of the proposal and will respond to the public comments. For the procedural history of the proceeding and the text of the rules themselves, see the June 11, 1991 second notice opinion and order.[1]

Background

The Agency filed this regulatory proposal on January 17, 1991. The proposal seeks to correct deficiencies identified by the United States Environmental Protection Agency (USEPA) in Illinois' state implementation plan (SIP) for ozone in the Chicago area.[2] The proposed regulations require the implementation of reasonably available control technology (RACT) for certain sources of volatile organic material (VOM). Section 182(a)(2)(A) of the federal Clean Air Act (CAA), as amended in 1990, requires states to submit corrections to its RACT rules to USEPA by May 15, 1991. (The Board once again points out that it was prepared to proceed to emergency rulemaking in order to meet the May 15 deadline. However, on the

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[1] The Board wishes to acknowledge the extensive contributions of attorney assistant Elizabeth Schroer Harvey to this complex and expedited rulemaking.

[2] The Chicago area is defined in this rulemaking as Cook, DuPage, Kane, Lake, McHenry, and Will counties. (See Section 218.100.)

motion of the Agency, with support from IERG and USEPA, the Board suspended its consideration of the rules as emergency rules. See the June 11, 1991 second notice opinion and order.) Illinois needs to make corrections to its RACT rules because the Illinois ozone SIP was disapproved by USEPA on September 30, 1988. (Ex. J.) USEPA had notified Illinois of deficiencies in the SIP by letters dated May 26, 1988 and June 17, 1988. (Ex. A and B.) This rulemaking will fulfill the CAA requirement that Illinois submit RACT corrections.

On June 29, 1990, USEPA promulgated a federal implementation plan (FIP) pursuant to Section 110(c) of the CAA and a settlement agreement entered in Wisconsin v. Reilly, No. 87-C-0395 (U.S. Dist. Ct., E.D. Wis.). (55 Fed.Reg. 26814 (June 29, 1990); Ex. E.) The FIP contains regulations imposing RACT on VOM sources in the Chicago area. Several industry groups, such as the Illinois Environmental Regulatory Group (IERG) and the Printing Industry of Illinois/Indiana (Printing Industry), as well as several individual industries, filed appeals of the FIP in the United States Circuit Court of Appeals for the Seventh Circuit. (See Illinois Environmental Regulatory Group v. USEPA, No. 90-2778 (and consolidated cases) (7th Cir.).) The Agency contended in its statement of reasons in support of this proposal that these proposed rules are substantively identical to the rules contained in the FIP, and that these proposed rules impose no further requirements or restrictions than are included in the FIP. Because the FIP has a compliance deadline of July 1, 1991 for covered sources in the Chicago area, the Agency maintained that these proposed rules have no further economic or technological effect on covered sources.[3]

Public Comments

The Board received a number of public comments during the first notice comment period in this proceeding. Comments were filed by Alusuisse Flexible Packaging, Inc. (P.C.# 2), the Administrative Code Unit (P.C.# 3), Riverside Laboratories (P.C.# 4 and 10), the City of Chicago (P.C.#5), the Department of Commerce and Community Affairs (P.C.# 6), IERG (P.C.# 7), the Department of Energy and Natural Resources (P.C.# 1 and 8), the Agency (P.C.# 9), Viskase Corporation (P.C.# 11), the Printing Industry and R.R. Donnelley & Sons, Inc. (P.C.# 12), Duo-Fast Corporation (P.C.# 13), Allsteel Incorporated (P.C.# 14), Stepan Company (P.C.# 15), USEPA (P.C.# 16), and Ford Motor Company (P.C.# 17). The Board has considered all of these comments, as well as the testimony received at hearing.

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[3] Several of the appellants in the federal court appeal of the FIP have obtained administrative stays of the FIP rules, so that the rules do not become effective as to them until September 1, 1991, or later.

Several of the major areas of dispute have apparently been resolved during negotiations between USEPA, the Agency, and IERG. These resolutions are reflected in the Agency's June 3 motion to amend its proposal. (The Board granted that motion to amend on June 11, and the rules proposed for second notice reflect those amendments.) One of the areas of controversy had been the area of "maximum theoretical emissions" (MTE). As originally proposed by the Agency, MTE was defined as the quantity of VOM emissions which could theoretically be emitted by a source based on the design or maximum production capacity of the source and 8760 hours per year of operation. The Agency subsequently amended that proposed definition to allow a limit to MTE for a particular source by imposing conditions in a federally enforceable operating permit. (Section 218.104.) USEPA does not currently recognize air operating permits issued by the Agency as federally enforceable. However, the Agency stated that the changes in the definition of MTE and the addition of a definition of "rolling limit" are steps towards ensuring the federal enforceability of operating permits. Additionally, the Agency has committed to taking other actions outside of this rulemaking to meet federal requirements to have Illinois' operating permit system recognized as federally enforceable. Until USEPA finally determines that Illinois permits are federally enforceable, permittees can limit the applicability of MTE through established Board practices of adjusted standards or site-specific rulemakings, followed by a SIP revision.

Another area of great controversy at hearing and in comments involved the question of when compliance with these rules would be required. The original Agency proposal tied the compliance date of the rules to final action in the federal court appeal of the FIP. However, at hearing a representative of USEPA, Stephen Rothblatt, stated that while he believed that the rules are generally federally approvable, the compliance and applicability provisions must include specific dates, independent of federal court action, when compliance with the rules is required. (Tr. I at 27-8.)[4] Representatives of industry objected to a specific date. For example, IERG commented that if the rules are adopted by the Board with a compliance date certain, and the rules are approved by USEPA, the FIP would no longer be necessary. IERG contended that if USEPA then decided to withdraw the FIP rules, the federal court challenges to those rules would be mooted. IERG thus maintained that Board action in setting a specific date certain would deprive IERG and the other federal court petitioners of their right to litigate their positions. (P.C.# 7.)

In its motion to amend, the Agency proposed a change to the

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[4] The transcript of the April 10, 1991 hearing will be designated "Tr. I", and the transcript of the April 15, 1991 hearing will be indicated by "Tr. II".

compliance and applicability sections. (Sections 218.103 and 218.106.) These sections, as amended, establish a July 1, 1991 compliance date. (The FIP also requires compliance on July 1.) There are several exceptions to that July 1 date, however. The rules require compliance on September 1, 1991 for all appellants, including the members of appellants which are associations, involved in the federal court FIP appeal. That September 1 date is a result of an administrative stay of the FIP rules granted to the appellants by USEPA. (Tr. I at 37-9; P.C.# 16.) Additionally, the effectiveness of the rules as to any appellant is stayed to the extent that an individual source or category of sources has received a stay of the FIP from USEPA or the federal court. There are several individual sources which have received such stays from USEPA. Finally, these rules do not apply to Viskase, Allsteel, Stepan, or Ford to the extent that these sources have previously obtained an adjusted standard from the Board or an exclusion from the Illinois General Assembly for any subpart of Part 218 or Part 215. The Board accepted these proposed changes. Based on statements by the Agency and IERG, the Board believes that these changes will address the compliance and applicability problems.

The Agency's suggested amendments also included changes to the non-CTG rule in Subpart TT for "other" emission sources. As amended, Subpart TT does not apply to operations for which a permit is not required by 35 Ill.Adm.Code 201.146. (Section 218.980(a).) Subpart TT already provided for a de minimis exemption where up to 5 tons per year of VOM emissions need not comply with control requirements. (Section 218.980(c).) A number of specific industry categories are also exempted from Subpart TT.

The Agency also suggested changes to testing requirements for non-CTG categorical sources covered by Subparts PP, QQ, RR, and TT. As originally proposed, sources would have been required to perform mandatory testing in order to certify compliance with the rules. The Agency agreed, however, that "mandatory testing for the variety of emission sources conglomerated under the generic rule, many of which are individually quite small, is expensive and burdensome." (Motion to amend at 8.) As amended, the testing rules require compliance certifications, with test data included in the compliance demonstration "as appropriate". Where the Agency determines that testing is necessary to show compliance, the facility must test at its own expense.

The Board once again points out that these proposed rules are identical in effect to the rules promulgated by USEPA in the FIP. Because those FIP rules become effective on July 1, 1991, regardless of what action is taken by the Board in this rulemaking, industries in the Chicago area will be required to comply with the rules as of July 1. Thus, the Board finds that its proposal of these rules, and the expected subsequent adoption of the rules, impose no further requirements on covered sources in the Chicago area. Thus, these rules themselves have no economic effect, and

therefore are economically reasonable.

Finally, the Board again points out that the procedural history of this proceeding and the text of the rules are contained in the June 11, 1991 second notice opinion and order.

J.D. Dumelle abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Supplemental Opinion was adopted on the 20th day of June, 1991, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board