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BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

In The Matter of:)
)
Exemptions From Definitions of VOM,) R 95-16
USEPA Recommended Policy Amendments)
(January 1, 1995 through June 30,) (Rulemaking)
1995)

The following is a transcript of a hearing held in the above-entitled matter, at 100 West Randolph Street, Room 11-500, Chicago, Illinois, on the 6th of September, 1995, A.D., commencing at the hour of 1:30 o'clock p.m.

BEFORE:

Mr. Michael Mc Cambridge
Hearing Officer.

PRESENT:

Dr. G. Tanner Girard, Board Member

APPEARANCES:

Ms. Rachel Doctors
Bureau of Air
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276
appeared on behalf of the IEPA;

Mr. Whitney Wagner Rosen
Legal Counsel
Illinois Environmental Regulatory Group
215 East Avenue Street
Springfield, Illinois 62701
appeared on behalf of IERG.

Sally A. Guardado, C.S.R.
17369 Highwood Drive
Orland Park, IL 60462
(708) 479-6664

ALSO PRESENT:

Ms. Cynthia A. Faur
Sonnenschein, Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606
appeared on behalf of
Riverside Laboratories.

Mr. Chris Romaine
Manager New Source Review Unit
Air Permit Section

Sally A. Guardado, C.S.R.
17369 Highwood Drive
Orland Park, IL 60462
(708) 479-6664

HEARING OFFICER MC CAMBRIDGE: Let the record show that it is now 1:35. Hearing was noticed for 1:30. I'm Mike Mc Cambridge, I'm the Hearing Officer. Seated to my left is the Board Member in attendance, Dr. Tanner Girard.

This is the public hearing required under federal law in R 95-16, In The Matter Of Exemptions From The Definition of VOM, U.S. EPA Recommended Policy Amendments of January 1st through June 30, 1995.

On June 16, 1995, U.S. EPA added acetone to the list of those compounds that are exempted from the definition of volatile organic compounds, which, under the Illinois Regulations are VOM or volatile organic materials.

With that, I'd like to note that, the Board proposed amendment to Section 211.7150 to accommodate the exemption of acetone on July 7th, 1995. The Notice of Proposed Amendments for that appeared in the August 4th, 1995 Illinois Register at page 11297. The public comment period for that should expire on or about September 18th.

Then the Board received a July 18th request by the Agency to add amendments to three other sections to accommodate the exemption of acetone.

The Board adopted an opinion, a Supplemental Proposed Opinion and Order on August 3rd, 1995, including the Agency request of additional amendments.

A notice of proposed amendments appeared in the August 25th, 1995 Illinois Register, at page 12176. The public comment period for that would have expired under the Administrative Procedures Act on October 9th, 1995.

The additional sections involved are the Section 211.4250 definition of organic material and organics -- organic materials. The Section 211.4260 definition of organic solvent. And the Section 211.4610 definition of petroleum liquid.

Copies of these would be available through the Clerk of the Board for anyone interested.

With that, I would like the Agency to

identify itself for the record.

MS. DOCTORS: Rachel Doctors representing the Agency. And Chris Romaine is here.

HEARING OFFICER MC CAMBRIDGE: And Mr. Romaine's position?

MS. DOCTORS: Manager of new source?

MR. ROMAINE: Manager of the New Source Review Unit in the Air Permit Section.

HEARING OFFICER MC CAMBRIDGE: Would IERG care to identify itself.

MS. ROSEN: I'm Whitney Rosen, legal counsel Illinois Environmental Regulatory Group.

MS. FAUR: And I'm Cindy Faur from Sonnenschein, Nath & Rosenthal, here on behalf of Riverside Laboratories.

HEARING OFFICER MC CAMBRIDGE: Okay. With that, I will turn it over to the Agency, if you would have anything for the record.

MS. DOCTORS: I'd like to go second. I'd like IERG to go first.

HEARING OFFICER MC CAMBRIDGE: Okay. In that case, IERG?

MS. ROSEN: Okay. As I said, I'm Whitney Rosen. I'm here on behalf of Illinois Environmental Regulatory Group.

And first and foremost I want to make it clear that IERG urges and wishes the prompt and thorough resolution of this issue.

And the comments that I make are not intended to imply that we are adverse to the actual outcome of this proposal. We just have a concern of the way in which it's being done. And let me elaborate.

And prior to this elaboration, I'd like to note that IERG will be continuing discussions with the Agency about an appropriate resolution of this issue. And given IERG's late involvement in this, I think that our discussions will -- we will be able to reach an agreement. We just need a little bit longer and then we can address that in comments.

IERG's primary concern has do with the possible precedent which could be set in extending the application of 9.1, as it is being

done in this rulemaking, possibly beyond the literal language of the statute.

IERG is unclear at this point as to whether 9.1(e) of the Environmental Protection Act would allow the EPA and the Illinois Pollution Control Board to make some of the revisions to the regulations. It's the other definitions, aside from the revisions to volatile organic compounds or is it -- yes, volatile organic matter, as they're proposing. And that is our main concern.

In reviewing this matter, we have come upon an alternate resolution which we would like to suggest. And, as I said, I will readdress this in comments after discussions with the EPA.

All right. Section 9.1(e) of the Act, directs the Pollution Control Board to exempt from regulation under the State Implementation Plan for ozone the volatile organic compounds which U.S. EPA has determined to be exempt from regulations under the SIP for ozone due to photochemical reactivity.

U.S. EPA has decided and has taken

that action for acetone and, in the past, other chemicals. 9.1(e), also, directs the Board to complete this exemption by amending the list of exemptions to the Board definition of volatile organic matter, at 35 Illinois Administrative Code, Part 211.

IERG proposes a possible resolution to that Pollution Control Board action pursuant to Section 9.1(e) and consistent with Section 7.2, the identical insubstance rulemaking provision. That their action, in amending the definition of volatile organic matter, changes, by operation of law, the regulation of acetone elsewhere in the regulation and within the SIP for ozone.

Thus, the regulation of acetone by the Illinois Regulations, under the SIP for ozone that we're operating prior to the amendment of the definition, are now defunct by operation of law.

The definitions and other, I guess it's definitions of other words that may be interpreted to include acetone, will have to be cleaned up just in a cleanup rulemaking, as they

apply to regulation of the ozone under the SIP and it would not have to be completed in an identical insubstance rulemaking.

That is basically our statement. And we are going to put further the issue and discuss with the Agency more and address it all in our comments.

And I can answer any questions.
Thank you.

BOARD MEMBER GIRARD: I have a question.

So let me just clarify and see if we can summarize what your position is.

Your position is, then, that what the Board should be doing in this proceeding is changing the definition of VOM to exclude acetone?

MS. ROSEN: Correct.

BOARD MEMBER GIRARD: But not changing the definition of organic material, organic solvent and petroleum liquid, because you are saying that by changing the definition of VOM, these other definitions are changed by that action and then we would do it later on in the cleanup.

MS. ROSEN: Correct. But those definitions are only changed as they relate to the regulation of ozone under the SIP.

BOARD MEMBER GIRARD: Okay.

Mike?

HEARING OFFICER MC CAMBRIDGE: That was my question.

BOARD MEMBER GIRARD: That was your question.

MS. ROSEN: Okay.

HEARING OFFICER MC CAMBRIDGE: Is it your -- IERG's position that even in proposing the amendments to 211.7150, that the Board is within the literal terms of Section 9.1(e)?

MS. ROSEN: Is 211.7150 the --

HEARING OFFICER MC CAMBRIDGE: Definition of VOM.

MS. ROSEN: Yes.

HEARING OFFICER MC CAMBRIDGE: And that is despite the fact --

MS. ROSEN: I believe that's the authority which you cited, too, and then moving forward on the rulemaking.

HEARING OFFICER MC CAMBRIDGE: And that's despite that fact that 211.7150 refers to a recommended policy as opposed to any federal regulation?

MS. ROSEN: Let me address that in comments because I'm not sure the answer to your question.

HEARING OFFICER MC CAMBRIDGE: Does the Agency have any questions?

MS. DOCTORS: No. I don't have any questions, but I would like to make a statement.

HEARING OFFICER MC CAMBRIDGE: Okay. Go ahead.

MS. DOCTORS: Are you done?

MS. ROSEN: I'm finished.

HEARING OFFICER MC CAMBRIDGE: Are there any other questions?

(NO RESPONSE.)

HEARING OFFICER MC CAMBRIDGE: Okay.

BOARD MEMBER GIRARD: I may have some later.

HEARING OFFICER MC CAMBRIDGE: Agency?

MS. DOCTORS: The Agency believes that all the definitions should be included. Acetone should be exempted from VOM -- organic material -- excluded

from petroleum liquid, and removed from organic solvent.

It believes that 9.1(e) gives the Board the necessary authority to amend all the definitions because it pertains to -- as they pertain to the SIP for ozone. That to limit it, otherwise, would end up -- would give contrary results. Because there are other definitions where acetone comes into play, namely, Subparts B and R, if the definitions are not amended, which are ozone rules.

In addition, we are concerned and we will address it more in comments with IERG's solution, because it seems to extend -- it seems to extend the authority to something that's not written down. To say that by amending just one definition versus all the other definitions that we have, and not explicitly stating which ones, it leaves it open for interpretation later on when you go back to do a clean up. It won't be clear. And every company can come in on a case-by-case basis.

So in a way, we're more comfortable

with things put in writing, to say explicitly where things apply and where they do not apply.

And we are going to leave with we're going to discuss this issue -- the jurisdictional issues -- in more detail with IERG, probably this week or next week, to see if we can come up with a clearer understanding.

BOARD MEMBER GIRARD: I have another question for Whitney.

Is your argument primarily that the Board is overstepping its authority? I'm trying to understand it.

MS. ROSEN: We have a concern that the provisions for 9.1(e) and tying into the identical insubstance rulemaking provisions shouldn't be used to make the corrections to the other definitions.

And we have not concluded that, yet, though. I want to make that clear. Because we haven't concluded that. And we just don't want to sign off on this proceeding and have it become precedent for the future when a delisting or a listing, or anything pursuant to the identical

insubstance rulemaking provisions would be impacted.

That's our concern.

BOARD MEMBER GIRARD: And so you are going to spell all these arguments out in more detail in post-hearing comments?

MS. ROSEN: We may do that. We may also achieve a very amicable resolution with the Agency and an interpretation that we both agree on, and address a chunk of them in comments, so that it's clear to the Board.

As I stated at the beginning of my comments, we want these corrections, the delisting of acetone and the corrections to the other definitions, completed as quickly as possible, whether it be by operation of law or some other measure. That's what we'd like.

BOARD MEMBER GIRARD: Thank you.

It does seem that the Agency's position is that this is the most efficient way to do it. And, also, you know, your identifying everything up front that's going to be changed and we put it out in the open.

MS. ROSEN: Right.

BOARD MEMBER GIRARD: Rather than leaving it up to interpretation later on as to what may or may not be changed.

MS. ROSEN: Right.

BOARD MEMBER GIRARD: So you can respond to that in your comments, also.

MS. ROSEN: We will. Thank you.

BOARD MEMBER GIRARD: Thank you.

Do you have anything else, Mike?

HEARING OFFICER MC CAMBRIDGE: No. Except, that at times I, myself, get confused.

Any further questions of the Agency?

(NO RESPONSE.)

HEARING OFFICER MC CAMBRIDGE: Okay.

BOARD MEMBER GIRARD: Actually, Mike, I did have a question.

In our August 3rd document, we did ask for other comments from the Agency and other parties about how this would affect some of our past identical insubstance rulemakings where we did not go back and change collateral definitions. Are you

going to address that in comments?

MS. DOCTORS: Yes.

BOARD MEMBER GIRARD: Or can you speak in summary now?

MS. DOCTORS: I would prefer to address it in comments.

BOARD MEMBER GIRARD: Okay.

MS. DOCTORS: What I would like to say is we are looking at it. We're looking. You know, it's complicated. These are different kind of compounds.

BOARD MEMBER GIRARD: Yes.

MS. DOCTORS: Acetone is much more straightforward than some of the other compounds. So it's an issue Chris and I are looking at.

BOARD MEMBER GIRARD: Okay. Thank you.

HEARING OFFICER MC CAMBRIDGE: Ms. Faur, do you have anything?

MS. FAUR: I'm just an observer today.

BOARD MEMBER GIRARD: Thank you very much.

HEARING OFFICER MC CAMBRIDGE: Yes. Thank you.

And that concludes this hearing.

(HEARING CLOSED.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

Sally A. Guardado hereby certifies that she is the Certified Shorthand Reporter who reported in shorthand the proceedings had in the above-entitled matter, and that the foregoing is a true and correct transcript of said proceedings.

Sally Anne Guardado

Certified Shorthand Reporter
Notary Public, County of Cook, State of Illinois

