

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2008

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R08-19
217, NITROGEN OXIDES EMISSIONS,) (Rulemaking - Air)
AND 35 ILL. ADM. CODE 211)

ORDER OF THE BOARD (by A.S. Moore):

On May 9, 2008, the Illinois Environmental Protection Agency (Agency) filed a proposal under the general rulemaking provisions of Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2006)). A motion for waiver of copy requirements (Mot.) accompanied the proposal. Generally, the Agency proposes to amend Parts 211 and 217 of the Board's air pollution regulations (35 Ill. Adm. Code 211, 217) to control nitrogen oxides (NO_x) emissions from various source categories, including emission units within these categories such as industrial boilers, process heaters, glass melting furnaces, cement kilns, lime kilns, furnaces used in steelmaking and aluminum melting, and fossil fuel-fired stationary boilers. The Board accepts the proposal for hearing today, grants the Agency's request for waiver of copy requirements, and directs the hearing officer to proceed to hearing in this matter.

SUMMARY OF PROPOSAL

In support of its proposed regulations to control NO_x emissions from various source categories, the Agency submitted a Statement of Reasons (Statement) and a Technical Support Document.

The Agency states that it intends its proposal to satisfy Illinois' obligation to submit a State Implementation Plan (SIP) to address the requirements under the federal Clean Air Act for major stationary sources of NO_x in areas designated as nonattainment with respect to National Ambient Air Quality Standards (NAAQS). Statement at 1, citing 42 U.S.C. §§ 7502, 7511a. The Agency indicates that NO_x is a primary precursor to the formation of ozone and is also a precursor to the formation of particulate matter that is 2.5 micrometers or smaller in size (PM_{2.5}). Statement at 2, 4.

The Agency states that on July 18, 1997, the United States Environmental Protection Agency (USEPA) "revised the NAAQS for ozone by replacing the 1-hour standard with an 8-hour standard." Statement at 3, citing 62 Fed. Reg. 38856 (July 18, 1997). Illinois includes the Chicago and Metro East areas designated as nonattainment (moderate) for the eight-hour ozone standard. Statement at 3.

The Agency further states that on July 18, 1997, USEPA also established primary annual and 24-hour standards for PM_{2.5}. Statement at 4, citing 62 Fed. Reg. 38652 (July 18, 1997). "USEPA issued final PM_{2.5} designations for areas violating the 1997 standards on December 17, 2004." Statement at 4, citing 70 Fed. Reg. 944 (Jan. 5, 2005). USEPA strengthened the 24-hour

standard in 2006. Statement at 4, citing 71 Fed. Reg. 61144 (Oct. 17, 2006). In Illinois, the Chicago and Metro East areas are designated as nonattainment for the PM_{2.5} standard. Statement at 4-5.

The Agency states that its proposal requires major stationary sources, which include those emitting or having the potential to emit NO_x in an amount equal to or greater than 100 tons per year, located in nonattainment areas to comply with emission limitations established by the proposal beginning May 1, 2010. Statement at 8. The proposed rule would also apply to

any industrial boiler, process heater, glass melting furnace, cement kiln, lime kiln, iron and steel reheat, annealing, or galvanizing furnace, aluminum reverberatory or crucible furnace, or fossil fuel-fired stationary boiler at such sources that emit NO_x in an amount equal to or greater than 15 tons per year and equal to or greater than five tons per ozone season. *Id.*

The Agency expects this proposed rulemaking “to reduce NO_x emissions by approximately 46.3% or 20,666 tons per year beginning in 2010.” *Id.* at 11.

MOTION FOR WAIVER OF REQUIREMENTS

In its motion for waiver of copy requirements, the Agency notes that the Board’s procedural rules require filing the original and nine copies of its regulatory proposal with the Board’s Clerk. Mot. at 1, citing 35 Ill. Adm. Code 102.200. Because the entire proposal consists of more than 1,000 pages, the Agency “requests that it be allowed to file the original and four complete copies of the proposal, plus five partial copies, the partial copies consisting of pleadings and the proposed rule absent documents relied upon and incorporated by reference.” Mot. at 1.

The Agency further notes that the Board’s procedural rules require filing one copy of the regulatory proposal with the Attorney General. Mot. at 1, citing 35 Ill. Adm. Code 102.200. The Agency states that the Office of the Attorney General has agreed to be “served with a partial copy and any additional information or documents requested after reviewing the proposal.” Mot. at 2.

The Agency also notes that the Board’s procedural rules require filing one copy of the regulatory proposal with the Department of Natural Resources (DNR). Mot. at 2, citing 35 Ill. Adm. Code 102.200. The Agency states that the DNR has agreed to be “served with a partial copy and any additional information or documents requested after reviewing the proposal.” Mot. at 2.

The Agency states that the Act requires it to provide information supporting its regulatory proposal. Mot. at 2, citing 415 ILCS 5/27(a) (2006). The Agency states that Attachment A to its motion lists documents it relied upon in drafting that proposal. Mot. at 2. The Agency claims that the first two documents listed in Attachment A “are readily accessible to or are within the possession of the Board” and requests that the Board waive the requirement of providing copies of them. Mot. at 2. Because of the volume of the remaining 66 documents listed there, the

Agency requests that the Board waive the normal copy requirements and allow filing an original and four copies of them. *Id.*

In addition, the Agency states that the Illinois Administrative Procedure Act allows an agency to “incorporate by reference the regulations, standards and guidelines of an agency of the United States or a nationally recognized organization or association without publishing the incorporated material in full.” Mot. at 2, citing 5 ILCS 100/5-75(a) (2006). The Agency further states that the agency adopting a regulation must maintain a copy of the authority incorporated by reference and make it available to the public upon request. Mot. at 2-3, citing 5 ILCS 100/5-75(b) (2006). The Agency claims that the documents it has incorporated by reference in this proposal “are quite lengthy and are readily available.” Mot. at 3. Accordingly, the Agency requests that the Board waive the requirements of its procedural rules and allow the Agency not to file a copy of the first document it incorporates by reference and to file four copies of the remaining three documents it incorporates. *Id.*, citing 35 Ill. Adm. Code 102.200.

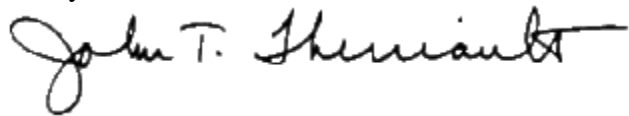
CONCLUSION

The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102. The Board accepts this proposal for hearing and directs the assigned hearing officer to proceed to hearing under the rulemaking provisions of the Act and the Board’s procedural rules. 415 ILCS 5/27, 28 (2006); 35 Ill. Adm. Code 102. After conducting hearings on this proposal, the Board will determine whether to proceed to first notice.

The Board grants the Agency’s motion for waiver of requirements. The Board allows the Agency to file an original and four complete copies of its proposal, plus five partial copies consisting of the pleadings and the proposed rule absent documents relied upon and incorporated by reference. In addition, the Board allows the Agency to serve a partial copy and any additional information or documents requested after reviewing the proposal on the Office of the Attorney General and the DNR. The Board grants the Agency’s motion to waive the requirement to file copies of the first two documents listed in Attachment A of its motion and also grants the Agency motion to allow filing an original four copies of the remaining 66 documents listed in Attachment A. The Board also allows the Agency not to file the first document listed on page 3 of its motion as incorporated by reference, as it is readily available. Finally, the Board also allows the Agency to file an original and four copies of the remaining three documents listed as incorporated by reference.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 5, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board