



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Elaine Nekritz

SYNOPSIS AS INTRODUCED:

415 ILCS 5/10

from Ch. 111 1/2, par. 1010

Amends the Environmental Protection Act. Provides that the Pollution Control Board may not amend or revise its new source review regulations to be less stringent than those that existed on December 30, 2002. Requires the Board, if the Board finds, after a public hearing, that its rules or regulations are not equivalent to or more stringent than the rules or regulations that existed on December 30, 2002, to promptly adopt the rules or regulations that may be necessary to establish, at a minimum, equivalency.

LRB093 18752 BDD 47252 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning environmental protection.

2 WHEREAS, For over 25 years, the federal Clean Air Act (42
3 U.S.C. Sec. 7401, et seq.) has required major new and modified
4 sources of air pollution to be subject to a new source review
5 program for nonattainment areas and for the prevention of
6 significant deterioration, in order to ensure that those
7 sources use the state-of-the-art level of emission control,
8 offset any new emissions, and comply with other requirements,
9 as a means of ensuring that those new and modified sources do
10 not adversely affect air quality; and

11 WHEREAS, Requiring modern pollution controls and emission
12 offsets for new and modified sources ensures that industrial
13 growth does not result in unacceptable levels of air pollution
14 and that existing sources operate more cleanly over time by
15 applying the latest pollution controls when those sources are
16 overhauled or upgraded; without these limits, air quality would
17 degrade over time, and industrial growth, critical to the
18 economic health of the state, would be foreclosed; and

19 WHEREAS, The new source review program has been a
20 cornerstone of the State's efforts to reduce pollution from new
21 and existing industrial sources by requiring those sources to
22 use the state-of-the-art level of emission controls based on
23 the attainment status of the area where the source is located;
24 and

25 WHEREAS, The U.S. Environmental Protection Agency (U.S.
26 E.P.A.) initially promulgated, and subsequently has revised,
27 the new source review program to carry out the requirements of
28 the federal Clean Air Act for preconstruction review of new and
29 modified sources of air pollutants by the states; and

30 WHEREAS, On December 31, 2002, the U.S. E.P.A., under the

1 direction of the President of the United States, promulgated
2 regulations that substantially weaken the basic federal new
3 source review program (67 Fed.Reg. 80186-80289 (Dec. 31,
4 2002)); in promulgating the regulatory amendments, the U.S.
5 E.P.A. claims that the new source review program has impeded or
6 resulted in the cancellation of projects that would maintain or
7 improve reliability, efficiency, and safety. This claim is
8 contradicted by Illinois' experience under the new source
9 review programs of the air pollution control and air quality
10 management districts; and

11 WHEREAS, The amendments promulgated December 31, 2002,
12 will drastically reduce the circumstances under which
13 modifications at an existing source would be subject to federal
14 new source review. The U.S. E.P.A. has also adopted a rule
15 changing the definition of "routine maintenance, repair and
16 replacement", which, if it survives judicial review, will
17 significantly worsen the situation; and

18 WHEREAS, The newly revised federal new source review
19 reneges on the promise of clean air embodied in the federal
20 Clean Air Act, and threatens to undermine the air quality of
21 the State of Illinois and thereby threatens the health and
22 safety of the people of the State; and

23 WHEREAS, Section 107 of the federal Clean Air Act (42
24 U.S.C. Sec. 7407) provides that the State has primary
25 responsibility for meeting ambient air quality standards in all
26 areas of the State, and that the means to achieve the standards
27 must be set out in the State implementation plan; and

28 WHEREAS, Section 116 of the federal Clean Air Act (42
29 U.S.C. Sec. 7416) preserves the right of states to adopt air
30 pollution control requirements that are more stringent than
31 comparable federal requirements. Moreover, the recent
32 revisions to the federal new source review regulations provide

1 that the states may adopt permitting programs that are "at
2 least as stringent" as the new federal "revised base program,"
3 and that the federal regulations "certainly do not have the
4 goal of 'preempting' State creativity or innovation." (67
5 Fed.Reg. 80241); and

6 WHEREAS, It is necessary to protect public health and
7 welfare from any actual or potential adverse effect that
8 reasonably may be anticipated to occur from air pollution;
9 therefore

10 **Be it enacted by the People of the State of Illinois,**
11 **represented in the General Assembly:**

12 Section 5. The Environmental Protection Act is amended by
13 changing Section 10 as follows:

14 (415 ILCS 5/10) (from Ch. 111 1/2, par. 1010)

15 Sec. 10. Regulations.

16 (A) The Board, pursuant to procedures prescribed in Title
17 VII of this Act, may adopt regulations to promote the purposes
18 of this Title. Without limiting the generality of this
19 authority, such regulations may among other things prescribe:

20 (a) Ambient air quality standards specifying the
21 maximum permissible short-term and long-term
22 concentrations of various contaminants in the atmosphere;

23 (b) Emission standards specifying the maximum amounts
24 or concentrations of various contaminants that may be
25 discharged into the atmosphere;

26 (c) Standards for the issuance of permits for
27 construction, installation, or operation of any equipment,
28 facility, vehicle, vessel, or aircraft capable of causing
29 or contributing to air pollution or designed to prevent air
30 pollution;

31 (d) Standards and conditions regarding the sale,

1 offer, or use of any fuel, vehicle, or other article
2 determined by the Board to constitute an air-pollution
3 hazard;

4 (e) Alert and abatement standards relative to
5 air-pollution episodes or emergencies constituting an
6 acute danger to health or to the environment;

7 (f) Requirements and procedures for the inspection of
8 any equipment, facility, vehicle, vessel, or aircraft that
9 may cause or contribute to air pollution;

10 (g) Requirements and standards for equipment and
11 procedures for monitoring contaminant discharges at their
12 sources, the collection of samples and the collection,
13 reporting and retention of data resulting from such
14 monitoring.

15 (B) The Board shall adopt sulfur dioxide regulations and
16 emission standards for existing fuel combustion stationary
17 emission sources located in all areas of the State of Illinois,
18 except the Chicago, St. Louis (Illinois) and Peoria major
19 metropolitan areas, in accordance with the following
20 requirements:

21 (1) Such regulations shall not be more restrictive than
22 necessary to attain and maintain the "Primary National
23 Ambient Air Quality Standards for Sulfur Dioxide" and
24 within a reasonable time attain and maintain the "Secondary
25 National Ambient Air Quality Standards for Sulfur
26 Dioxide."

27 (2) Such regulations shall be based upon ambient air
28 quality monitoring data insofar as possible, consistent
29 with regulations of the United States Environmental
30 Protection Agency. To the extent that air quality modeling
31 techniques are used for setting standards, such techniques
32 shall be fully described and documented in the record of
33 the Board's rulemaking proceeding.

34 (3) Such regulations shall provide a mechanism for the
35 establishment of emission standards applicable to a
36 specific site as an alternative to a more restrictive

1 general emission standard. The Board shall delegate
2 authority to the Agency to determine such specific site
3 emission standards, pursuant to regulations adopted by the
4 Board.

5 (4) Such regulations and standards shall allow all
6 available alternative air quality control methods
7 consistent with federal law and regulations.

8 (C) The Board may not adopt any regulation banning the
9 burning of landscape waste throughout the State generally. The
10 Board may, by regulation, restrict or prohibit the burning of
11 landscape waste within any geographical area of the State if it
12 determines based on medical and biological evidence generally
13 accepted by the scientific community that such burning will
14 produce in the atmosphere of that geographical area
15 contaminants in sufficient quantities and of such
16 characteristics and duration as to be injurious to humans,
17 plant, or animal life, or health.

18 (D) The Board shall adopt regulations requiring the owner
19 or operator of a gasoline dispensing system that dispenses more
20 than 10,000 gallons of gasoline per month to install and
21 operate a system for the recovery of gasoline vapor emissions
22 arising from the fueling of motor vehicles that meets the
23 requirements of Section 182 of the federal Clean Air Act (42
24 USC 7511a). These regulations shall apply only in areas of the
25 State that are classified as moderate, serious, severe or
26 extreme nonattainment areas for ozone pursuant to Section 181
27 of the federal Clean Air Act (42 USC 7511), but shall not apply
28 in such areas classified as moderate nonattainment areas for
29 ozone if the Administrator of the U.S. Environmental Protection
30 Agency promulgates standards for vehicle-based (onboard)
31 systems for the control of vehicle refueling emissions pursuant
32 to Section 202(a)(6) of the federal Clean Air Act (42 USC
33 7521(a)(6)) by November 15, 1992.

34 (E) The Board shall not adopt or enforce any regulation
35 requiring the use of a tarpaulin or other covering on a truck,
36 trailer, or other vehicle that is stricter than the

1 requirements of Section 15-109.1 of the Illinois Vehicle Code.
2 To the extent that it is in conflict with this subsection, the
3 Board's rule codified as 35 Ill. Admin. Code, Section 212.315
4 is hereby superseded.

5 (F) Any person who prior to June 8, 1988, has filed a
6 timely Notice of Intent to Petition for an Adjusted RACT
7 Emissions Limitation and who subsequently timely files a
8 completed petition for an adjusted RACT emissions limitation
9 pursuant to 35 Ill. Adm. Code, Part 215, Subpart I, shall be
10 subject to the procedures contained in Subpart I but shall be
11 excluded by operation of law from 35 Ill. Adm. Code, Part 215,
12 Subparts PP, QQ and RR, including the applicable definitions in
13 35 Ill. Adm. Code, Part 211. Such persons shall instead be
14 subject to a separate regulation which the Board is hereby
15 authorized to adopt pursuant to the adjusted RACT emissions
16 limitation procedure in 35 Ill. Adm. Code, Part 215, Subpart I.
17 In its final action on the petition, the Board shall create a
18 separate rule which establishes Reasonably Available Control
19 Technology (RACT) for such person. The purpose of this
20 procedure is to create separate and independent regulations for
21 purposes of SIP submittal, review, and approval by USEPA.

22 (G) Subpart FF of Subtitle B, Title 35 Ill. Adm. Code,
23 Sections 218.720 through 218.730 and Sections 219.720 through
24 219.730, are hereby repealed by operation of law and are
25 rendered null and void and of no force and effect.

26 (H) (1) Notwithstanding any other provision of law to the
27 contrary, the Board may not amend or revise its new source
28 review regulations to be less stringent than those that existed
29 on December 30, 2002. If the Board finds, after a public
30 hearing, that its rules or regulations are not equivalent to or
31 more stringent than the rules or regulations that existed on
32 December 30, 2002, then the Board must promptly adopt the rules
33 or regulations that may be necessary to establish, at a
34 minimum, equivalency.

35 (2) In amending or revising its new source review rules,
36 the Board may not change any of the following that existed on

1 December 30, 2002 if the amendments or revisions would exempt,
2 relax, or reduce the obligations of a stationary source for a
3 pertinent requirement:

4 (a) The applicability determination for new source
5 review.

6 (b) The definition or "modification", "major
7 modification", "routine maintenance", or "repair or
8 replacement".

9 (c) The calculation, methodology, thresholds, or other
10 procedures of new source review.

11 (d) Any definitions or requirements of the new source
12 review regulations.

13 (3) For purposes of this subpart (H):

14 (a) A "pertinent requirement" means:

15 (i) Any requirement to obtain new source review or
16 other permits to construct, prior to commencement of
17 construction.

18 (ii) Any requirement for best available control
19 technology.

20 (iii) Any requirement for air quality impact analysis.

21 (iv) Any requirement for recordkeeping, monitoring and
22 reporting in a manner that would make recordkeeping,
23 monitoring, or reporting less representative, enforceable,
24 or publicly accessible.

25 (v) Any requirement for regulating any air pollutant
26 covered by the new source review rules and regulations.

27 (vi) Any requirement for public participation,
28 including a public comment period, public notification,
29 public hearing, or other opportunities or forms of public
30 participation, prior to issuance of permits to construct.

31 (b) "More stringent" means that the application of the
32 source review rules increases the obligations of stationary
33 sources under the pertinent requirements.

34 (c) "Equivalent to" means that the application of the
35 source review rules does not alter the obligations of
36 stationary sources under the pertinent requirements.

1 (d) "Less stringent" means that the application of the
2 source review rules reduces the obligations of stationary
3 sources under the pertinent requirements.

4 (4) Notwithstanding subdivisions (1) and (2), the Board may
5 amend or revise a regulation if, at the time the amendments or
6 revisions are adopted, the Board makes its decision based upon
7 substantial evidence in the record and each of the following
8 conditions is met:

9 (a) The amended or revised rule or regulation:

10 (i) will replace an existing rule or regulation
11 that caused a risk to public health or safety from
12 exposure to a toxic material, a dangerous condition, or
13 an infectious disease with a rule or regulation that
14 provides greater protection to public health or
15 safety; and

16 (ii) is a temporary rule or regulation necessary to
17 respond to an emergency consisting of a sudden,
18 unexpected occurrence and demanding prompt action to
19 prevent or mitigate loss of or damage to life, health,
20 property, or essential services and the temporary rule
21 or regulation does not extend beyond the reasonably
22 anticipated duration of the emergency; and

23 (b) The amended or revised rule or regulation will not
24 exempt, relax, or reduce the obligation of any stationary
25 source under the rules or regulations of the Board, as
26 those rules or regulations existed on December 30, 2002, to
27 obtain a permit or to meet best available control
28 technology requirements. This paragraph applies only to a
29 source that constituted a major source under the rules or
30 regulations of a district that existed on December 30, 2002
31 and does not apply to any individual best available control
32 technology determination; and

33 (c) The amended or revised rule or regulation is
34 otherwise consistent with this subpart (H).

35 (I) Notwithstanding any preexisting delegation agreement
36 under which Illinois administers the federal new source review

1 program in attainment or unclassified areas, the Board must, no
2 later than 60 days after the effective date of this amendatory
3 Act of the 93rd General Assembly, adopt final and
4 immediately-effective emergency rules that apply to those
5 areas and that are identical to the rules applicable to those
6 areas on December 30, 2002.

7 After adopting the emergency rules, the Board may revise
8 them only if the Board determines, after a public hearing based
9 on substantial evidence in the record, that the application of
10 any new rules would be more beneficial to and more protective
11 of the public health and the environment.

12 (Source: P.A. 88-381; 89-79, eff. 6-30-95.)