

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2013

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
COAL COMBUSTION WASTE (CCW) AND) R14-10
SURFACE IMPOUNDMENTS AT POWER) (Rulemaking - Water)
GENERATING STATIONS: PROPOSED)
NEW 35 ILL. ADM. CODE PARTS 841)

 ORIGINAL

NOTICE OF HEARINGS

DATES, TIMES, AND LOCATIONS:

FIRST HEARING: BEGINNING WEDNESDAY, FEBRUARY 26, 2014

10:00 AM
Illinois Environmental Protection Agency
Sangamo Room
1021 N. Grand Ave E., north entrance
Springfield, Illinois

AND, IF BUSINESS REMAINS AT THE END OF HEARING ON THAT DAY, RESUMING ON THURSDAY, FEBRUARY 27, 2014, AT 9:00 AM AT THE SAME LOCATION

SECOND HEARING: BEGINNING WEDNESDAY, MAY 14, 2014

10:00 AM
James R. Thompson Center
Room 9-040
100 W. Randolph St.
Chicago, Illinois

AND, IF BUSINESS REMAINS AT THE END OF HEARING ON THAT DAY, RESUMING ON THURSDAY, MAY 15, 2013, AT 9:00 AM AT THE SAME LOCATION

PURPOSE OF HEARINGS: Merit and Economic
ATTENDING BOARD MEMBER: Jerome D. O'Leary
HEARING OFFICER: Timothy J. Fox

HEARING OFFICER ORDER

On October 28, 2013, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposal to add Part 841 to the Board's Subtitle G waste disposal regulations. Accompanying the proposal were documents including a Statement of Reasons (SR). See 35 Ill.

Adm. Code 102.202 (Proposal Content for Regulations of General Applicability). The Agency stated that it proposes

a rule of general applicability for coal combustion waste (“CCW”) surface impoundments at power generating facilities. This proposed rule sets forth a process to monitor CCW surface impoundments and groundwater, as well as a process for preventive response, corrective action and closure. The proposed rule allows each owner or operator to develop a site-specific plan for groundwater monitoring, preventive response, corrective action and closure. The proposed rule includes provisions for Agency review of plans and appeals of Agency decisions to the Board. SR at 1.

The Board will conduct two hearings in order to allow the Agency and any other interested participants the opportunity to present testimony and public comments on the merits and economic impact of the proposal. *See* 415 ILCS 5/28(a) (2012). At hearing, all persons wishing to testify will be sworn in and subject to questioning. The Board will also receive testimony on any economic impact study conducted by the Department of Commerce and Economic Opportunity (DCEO) on the proposed rules or on DCEO’s decision not to perform a study. *See* 415 ILCS 5/27(b) (2012); 35 Ill. Adm. Code 102.414(b).

Hearings

In setting hearing dates and filing deadlines, the Board has considered its general workload, rulemaking activity now underway, and the anticipated interest and involvement in the issues raised by the Agency’s proposal.

First Hearing

The hearing officer intends to begin the first hearing with the Agency’s testimony in support of its proposal. 35 Ill. Adm. Code 102.428(c). In its Statement of Reasons, the Agency indicated that it expects during the Board’s hearings on its proposal to present the testimony of four employees in its Division of Public Water Supplies: Mr. Rick Cobb, Deputy Division Manager; Mr. Bill Buscher, Manager of the Hydrogeology and Compliance Unit; Mr. Lynn Dunaway, Environmental Protection Specialist; and Ms. Amy Zimmer, Environmental Protection Geologist III. SR at 27. Consequently, for the first hearing the Board expects that the Agency will pre-file testimony by Mr. Cobb, Mr. Buscher, Mr. Dunaway, and Ms. Zimmer. *See* 35 Ill. Adm. Code 102.424(a).

The Agency is directed to pre-file its testimony and to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, please obtain the most recent version of the Service List through the Clerk’s Office On-Line (COOL) from the Board’s Web site (www.ipcb.state.il.us) or by contacting the Clerk’s Office at 312-814-3629.

Pre-filed testimony and any related exhibits on behalf of the Agency for the first hearing must be filed no later than Wednesday, January 15, 2014. In order to expedite the first hearing

and make it more efficient, participants are directed to pre-file written questions based on the Agency's pre-filed testimony no later than Wednesday, February 5, 2014. *See* 35 Ill. Adm. Code 102.424(a), (b). If any witness wishes to prepare and submit written answers to these pre-filed questions, he or she may do so by filing those answers with the Board's Clerk. For the first hearing, all pre-filed testimony and questions and any pre-filed answers will be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief introduction or summary of testimony will be allowed if a witness wishes to provide one before beginning to respond to questions.

The "mailbox rule" (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of pre-filed testimony or pre-filed questions for the first hearing, and the Board's Clerk must receive these documents before the close of business on the respective deadlines. However, these documents may be filed electronically through COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk's Office at (312) 814-3629.

Participants wishing to offer a public comment during the first hearing will be allowed to do so if time permits at the close of testimony and questions. The Board's procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

Second Hearing

If necessary, the hearing officer will begin the second hearing by concluding the Agency's testimony and questions based upon it. Next, participants who pre-filed testimony for the second hearing will present that testimony and respond to questions. As time permits after the conclusion of pre-filed testimony and questions based upon it, participants who do not pre-file testimony for the second hearing will then be allowed to testify and respond to questions.

Participants who intend to testify at the second hearing must pre-file their testimony and are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, please obtain the most recent version of the Service List through the Clerk's Office On-Line (COOL) from the Board's Web site (www.ipcb.state.il.us) or by contacting the Clerk's Office at 312-814-3629.

Pre-filed testimony and any related exhibits on behalf of any participant for the second hearing must be filed no later than Wednesday, April 2, 2014. In order to expedite the second hearing and make it more efficient, participants are directed to pre-file written questions based on any of the pre-filed testimony no later than Wednesday, April 23, 2014. *See* 35 Ill. Adm. Code 102.424(a), (b). If any witness wishes to prepare and submit written answers to these prefiled questions, he or she may do so by filing those answers with the Board's Clerk. As at the first hearing, all pre-filed testimony and questions and any pre-filed answers for the second hearing will be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of pre-filed testimony will be allowed if a witness wishes to provide one before responding to questions.

The “mailbox rule” (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of pre-filed testimony and questions for the second hearing, and the Board’s Clerk must receive these documents before the close of business on the respective deadlines. However, this testimony may be filed electronically through COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk’s Office at (312) 814-3629.

Participants wishing to offer a public comment at the second hearing will be allowed to do so if time permits at the close of the testimony and questions. The Board’s procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

Service and Notice Lists

The hearing officer has established a Service List and will maintain a Notice List for this proceeding. *See* 35 Ill. Adm. Code 102.422(a), (b). The Service List for this rulemaking includes persons expected to participate actively in this proceeding. Those persons will receive not only the Board’s opinions and orders in this docket but also other filings such as pre-filed testimony and questions. *See* 35 Ill. Adm. Code 102.422(b). The Notice List includes participants who wish to receive copies only of the Board’s opinions and orders and hearing officer orders. 35 Ill. Adm. Code 102.422(a).

Note that interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number R14-10. This electronic notice includes notice of the filing of documents that are not typically provided to persons on the Notice List. In addition, COOL provides links to documents filed with the Board, and those documents can be viewed, downloaded, and printed free of charge as soon as they are posted to the Board’s Web site. For more information about the option of electronic notice or COOL, please consult either the Board’s Web site at www.ipcb.state.il.us or John Therriault, the Board’s Clerk, at (312) 814-3629.

IT IS SO ORDERED.



Timothy J. Fox
Hearing Officer
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