

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE POLLUTION CONTROL BOARD

IN THE MATTER OF:) R02-10
AMENDMENTS TO GENERAL)RULEMAKING - AIR
PERMITTING PROVISIONS FOR)
PORTABLE EMISSIONS UNITS)
AMENDMENTS TO 35 ILL. ADM.)
CODE PART 201.)

The following is a transcript of
proceedings from the hearing held in the
above-entitled matter, taken stenographically by
ROSEMARIE LAMANTIA, CSR, a notary public within
and for the County of Cook and State of
Illinois, before STACY L. MEYERS, Hearing
Officer, at 100 West Randolph Street, Suite
11-500, Chicago, Illinois, on the 9th day of
April, 2002, A.D., scheduled to commence at the
hour of 10:30 a.m.

1 A P P E A R A N C E S:

2 HEARING TAKEN BEFORE:

3 ILLINOIS POLLUTION CONTROL BOARD

4 100 West Randolph Street

5 Chicago, Illinois 60601

6 (312) 814-7011

7 BY: MS. STACY L. MEYERS, HEARING OFFICER

8

9 ILLINOIS POLLUTION CONTROL BOARD MEMBERS

10 PRESENT:

11 Mr. Samuel Lawton, Jr.

12 Mr. Anad Rao

13 Ms. Alysa Liu

14 MEMBERS OF THE ILLINOIS ENVIRONMENTAL PROTECTION
15 AGENCY AS WELL AS OTHER INTERESTED ENTITIES AND
16 AUDIENCE MEMBERS WERE PRESENT AT THE HEARING,
17 BUT NOT LISTED ON THIS APPEARANCE PAGE.

17

18

19

20

21

22

23

24

1 HEARING OFFICER MEYERS: Good morning.

2 This hearing is being conducted by the
3 Illinois Pollution Control Board.

4 My name is Stacy Meyers. I'm the
5 hearing officer in this proceeding, which is
6 entitled, in the matter of, amendments to
7 general permitting provisions for portable
8 emissions units, amendments to 35 Illinois
9 Administrative Code 201, Docket Number R02-10.

10 I would like to introduce you to
11 members of the board that are here this morning.

12 To my immediate left is the board
13 member assigned to this matter. His name is Mr.
14 Samuel T. Lawton, Junior.

15 MR. LAWTON: Good morning.

16 HEARING OFFICER MEYERS: To the left
17 of me sitting on the side of the room is Ms.
18 Alysa Liu. She is an environmental scientist
19 with the board.

20 And sitting next to her, also to my
21 left, is Mr. Anand Rao and he is also an
22 environmental scientist with the board. We have
23 both of them here with us this morning.

24 For the record, today's date is April

1 9th, 2002, and it is approximately 10:30 in the
2 morning. This is the second and last of two
3 presently scheduled hearings for the receipt of
4 testimony and questions concerning the Illinois
5 Environmental Protection Agency's November 30th,
6 2001, proposal to amend the regulations
7 concerning existing portable emissions units.

8 The proposal seeks to exempt certain
9 owners and operators of smaller units from
10 having to obtain new construction and operating
11 permits required by Section 39 of the
12 Environmental Protection Act whenever they
13 change the site of their portable emissions
14 units. Copies of the agency's proposal are
15 located on the table in front of me.

16 The board accepted this matter for
17 hearing on December 6, 2001, has not yet issued
18 the first notice opinion and order.

19 The first hearing on this rulemaking
20 was held on March 20th, 2002, in Springfield,
21 Illinois, where the Illinois Environmental
22 Protection Agency presented testimony about the
23 proposed regulations.

24

In response to the questions by the

L.A. REPORTING, 312-419-9292

5

1 board, the agency filed an addendum to testimony
2 by Harish Desai on April 4, 2002. You may view
3 the transcript of the March 20th, 2002, hearing
4 on our Website. The address for this is
5 <http://www.ipcb.state.il.us>.

6 At this hearing, we welcome discussion
7 required by Section 27B of the act about an
8 economic impact study of the proposed
9 rulemaking.

10 On March 7, 2002, the board mailed a
11 request to the Department of Commerce and
12 Community Affairs known as DECA to perform an
13 economic impact study on the proposed
14 rulemaking. As of today's date, we have not
15 received a study from DECA. We do not
16 anticipate receiving one from DECA in this
17 matter.

18 We are open to testimony and
19 discussion both at this hearing as well in
20 public comments submitted to the board.

21 Both of the hearings in this matter
22 will be governed by the board's procedural rules

23 for regulatory proceedings. This means that I
24 will admit all information that is relevant and

L.A. REPORTING, 312-419-9292

6

1 not repetitious or privileged in accordance with
2 35 Illinois Administrative Code, 102.282. All
3 witnesses will be sworn and subject to
4 cross-examination.

5 For more information on this proposed
6 regulation, please feel free to take a copy of
7 the hearing officer's order dated September 7,
8 2000, in the front of the room. You may also
9 review information regarding this proceeding on
10 our Website. Again, our address is
11 www.ipcb.state.il.us.

12 We'll accept pre first noticed
13 comments on this proposed rulemaking until 30
14 days after the April 9, 2002, hearing.

15 Public comments are welcomed past this
16 May 9, 2002, deadline until the record closes 45
17 days after the first notice is published in the
18 Illinois Register, however, the board will only
19 consider comments filed by the May 9, 2002, date
20 in their first notice opinion and order. Anyone
21 may file public comments with the clerk of the

22 board. You must simultaneously deliver your
23 comments to all persons on the service list and
24 include an attached notice sheet, proof of

L.A. REPORTING, 312-419-9292

7

1 service and a copy of the current service list.
2 You should contact the clerk's office to make
3 sure you have an updated service list.

4 The usual order of regulatory hearings
5 is that the proponent of the proposed regulation
6 presents testimony concerning its proposal.

7 The Illinois Environmental Protection
8 Agency, who is the proponent of this proposed
9 regulation, presented its main testimony on the
10 proposed rulemaking at our first hearing on
11 March 20, 2002.

12 The agency pre filed its testimony
13 with the board on November 30, 2001, as a part
14 of its proposal.

15 As a reminder, the proposal, including
16 the pre filed testimony, is available on the
17 table in the front of the room.

18 Although, the agency provided its main
19 testimony at the March 20th, 2002, hearing it
20 will give a very brief overview of the

21 rulemaking today as well as a short discussion
22 concerning an amended time frame in the proposed
23 regulation.

24 After hearing from any witnesses

L.A. REPORTING, 312-419-9292

8

1 presented by the agency, we'll be accepting
2 questions about its proposal and at that time
3 attending board member Mr. Lawton, Junior, as
4 well as Ms. Liu will be asking questions of the
5 proponent.

6 Once the proponent has answered any
7 questions for the agency, the board usually
8 hears testimony from persons who have pre filed
9 testimony with the board, as no one but the
10 agency has done so, you will hear testimony from
11 people in the order that they have signed up
12 today. I will call people in the order that
13 they've registered to testify. I would like the
14 record to reflect that we do not have any
15 members from the public in the audience as of
16 this time today.

17 At this time, I would like to give Mr.
18 Samuel Lawton, Junior, the opportunity to make
19 any additional remarks.

20 MR. LAWTON: I have nothing additional
21 to say except, again, to welcome you, and
22 comment on the absence of an audience, which is
23 disappointing, but maybe that's a good sign.
24 Thank you.

L.A. REPORTING, 312-419-9292

9

1 HEARING OFFICER MEYERS: I would now
2 like to introduce Ms. Rachel Doctors from the
3 Illinois Environmental Protection Agency to
4 present a few opening remarks from the
5 proponent.

6 Once she has presented a very quick
7 review of the proposed rulemaking and
8 importantly a summary of the agency's response
9 to the board inquiries from the March 20, 2002,
10 hearing, we'll open up questions to the agency's
11 witness.

12 MS. DOCTORS: Good morning. My name
13 is Rachel Doctors. I'm representing the
14 Illinois Environmental Protection Agency in this
15 proposal for portable emissions units.

16 The proposal enables owners and
17 operators of these very small units that move,
18 that change locations more often than once a

19 year to streamline the permitting process. They
20 must obtain a lifetime operating permit and with
21 special conditions for portable emissions units.
22 As discussed at the earlier hearing, they must
23 be mounted on a chassis or skid. They can't be
24 thermal desorption or incinerator systems, must

L.A. REPORTING, 312-419-9292

10

1 emit less than 25 tons per year.

2 That is probably enough summary.

3 There were two inquiries at the
4 previous hearing.

5 One concerned Section 201170B5. In
6 that section we had required the owner or
7 operator to notify the agency by certified mail
8 prior to moving the unit but had not included a
9 time frame in which that notice was to be
10 provided.

11 In discussions with the agency
12 personnel we have offered an amendment that the
13 notification must be received at least three
14 days prior to moving the unit and have included
15 that in an addendum to testimony by Harish Desai
16 submitted to the board.

17 Another issue that was raised was

18 whether this should have included a reference to
19 Section 201144 and Subsections B, C or D of
20 Section 170. And the agency does not believe
21 such an amendment is necessary. Section 201144
22 requires owners or operators of existing
23 emissions units to obtain an operating permit
24 prior to operation of such unit. The term

L.A. REPORTING, 312-419-9292

11

1 existing emission unit is a defined term in
2 Section 201142. It is an emission unit that was
3 constructed or modified prior to April 14, 1972,
4 hence, if any owner or operator of an emission
5 unit subject to Section 201141 applies for a
6 portable emissions unit permit for that unit,
7 the application would instead be reviewed under
8 Sections 201142 and 201143 because the unit
9 would be subject to newer emission rules as a
10 result of going to be moved.

11 The term existing emissions unit
12 becomes subject to the new emissions unit
13 pursuant to these sections by virtue of its
14 change in location.

15 And that concludes the agency's
16 response to the board's questions at the March

17 20th hearing.

18 HEARING OFFICER MEYERS: Thank you.

19 We will now proceed with questions
20 from the agency. I believe Mr. Lawton has a few
21 questions for the proponent.

22 MR. LAWTON: My question primarily
23 relates to the notice of provision of your
24 amendment and that's set forth in what is

L.A. REPORTING, 312-419-9292

12

1 numbered paragraph 5 on page 2, at least five
2 days prior to moving the emissions unit.

3 MS. DOCTORS: Three.

4 MR. LAWTON: Did I say two?

5 At least three days prior.

6 MS. DOCTORS: Yes.

7 MR. LAWTON: My question then is, are
8 these three business days or three calendar
9 days?

10 MR. DESAI: That will be three
11 calendar days.

12 MR. LAWTON: That's the mailing. Is
13 that -- let me see what it says, at least three
14 days prior to moving the owner shall notify by
15 certified mail.

16 Well, is that the date of the postmark
17 now or is that the date of the receipt?

18 MR. DESAI: We have considered, we
19 talked about if -- whether it is postmarked or
20 the day we receive, we believe it should be the
21 date when they -- it is postmarked.

22 MR. LAWTON: Well, perhaps you may
23 want to consider amplifying that a little bit so
24 that there is no question. We run into that

L.A. REPORTING, 312-419-9292

13

1 with some frequency in our own rules and perhaps
2 a little more explanation would be adequate.

3 Now, this is just a comment with
4 regard to -- this proposal seems somewhat more
5 stringent than the more accommodating approach
6 the agency was promoting at the hearing. The
7 original proposal simply stated the agency shall
8 be notified before the unit is moved, even if
9 that notification comes in just hours before the
10 move, since the agency mentioned that the owner
11 or operators of the unit might need to move at a
12 moment's notice, it seems the additional three
13 days might be somewhat cumbersome. I don't know
14 if you want to comment on that.

15 MR. DESAI: Yes.

16 There are a few instances in the past
17 that an operator would come and wait to get the
18 permit, they would wait out in the lobby so they
19 can get the permit, but those kind of --
20 particularly impossible for an agency to do that
21 and three days seems to be a fairly reasonable
22 time for them to get the contract and perform
23 the work that they're required to do. All they
24 have to do is send the notification on that.

L.A. REPORTING, 312-419-9292

14

1 Did I answer your question?

2 MR. LAWTON: All right. Has there
3 been any thought to allowing alternative means
4 of notification such as faxes or e-mail, hand
5 delivery or phone call?

6 MR. DESAI: We talked about that also,
7 that they might send by e-mail or by phone call.

8 We definitely decided not to go by the
9 phone call because depends upon who they call,
10 if they can understand properly or not and there
11 are certain requirements in the notification
12 they're required to give us the amount of
13 emissions they're likely to have, the proper

14 address of where they're going to be located and
15 the phone call will definitely mess up the
16 situation.

17 E-mail, we thought about that also.
18 We have the staff for 55 people in the permit
19 section, whom are they going to send the e-mail
20 to? And it may go to the -- totally agency has
21 about pretty close to 13, 1400 employees,
22 1,000-ish in Springfield. So we don't want to
23 have the notice going to the wrong hand, by
24 putting name on.

L.A. REPORTING, 312-419-9292

15

1 There are so many of the e-mail
2 addresses also existing on the Website. So we
3 also rule out e-mail.

4 We thought about fax, by faxing it.
5 Then we're required to specify the phone number
6 and that phone number may change, get the new
7 fax machine or something of that nature so we
8 decided to rule out that also.

9 And they can, of course, definitely
10 send it by Federal Express. That will be
11 acceptable but that also is one kind of mailing.

12 MR. LAWTON: You might want to

13 consider allowing registered mail.

14 MR. DESAI: Sorry?

15 MR. LAWTON: You may want to consider
16 allowing registered mail. Registered mail is
17 more stringent than certified mail and some
18 entities use that as a matter of course. That
19 is only by way of suggestion. We're not making
20 any --

21 MR. DESAI: We also talked about that
22 and my personal experience with the registered
23 mail, one time I sent -- apparently, Springfield
24 area does have some problem. I sent registered

L.A. REPORTING, 312-419-9292

16

1 mail to my daughter and it took almost 22 days
2 before she got it. And we went to the post
3 office to file for a complaint and they says
4 until after 21 days past then only time that is
5 after that they will consider a complaint, not
6 before that. And apparently Rachel also had a
7 very similar experience with the registered
8 mail, so we ruled out registered mail because we
9 can't accept that kind of -- certified mail it
10 comes pretty fast.

11 MR. LAWTON: All right. Then you've

12 considered it.

13 MR. DESAI: Okay.

14 MR. LAWTON: I don't have anything
15 further.

16 MS. LIU: Off the record.

17 (Off the record.)

18 HEARING OFFICER MEYERS: If you could
19 swear them in.

20 (Whereupon, the witness were
21 previously sworn.)

22 HEARING OFFICER MEYERS: If the record
23 could reflect that both witnesses, Ms. Rachel
24 Doctors and Mr. Desai, have been sworn in and

L.A. REPORTING, 312-419-9292

17

1 have sworn that the testimony that they have
2 given as well as the testimony that they will
3 give is accurate and true.

4 Are there any other questions for the
5 witnesses?

6 MR. RAO: I had a follow question to
7 what Member Lawton was asking. I was just
8 curious as to, you know, what the agency will do
9 with this notification, what are the
10 implications of getting this notification from a

11 unit that's planning on moving?

12 MR. DESAI: Yes. A notice requires
13 them to submit certain information, the address,
14 where they're going to be located at, amount of
15 emissions they're likely to have, and at the
16 present time the way that it stands a fee will
17 be charged for each location, that notification
18 will be -- once it is received will be sent to
19 the emission inventory people that will update
20 that emission inventory for the new location
21 because the new location will be emitting amount
22 of emissions and by doing that they will also
23 then verify where the source is going to be
24 located at the same location where there is a

L.A. REPORTING, 312-419-9292

18

1 lifetime source or nothing else is existing and
2 it is not going to be at the location where that
3 device or office is located.

4 MR. RAO: Will there be a situation
5 where they then suggest this information then,
6 you know, the agency gets this information and
7 looks at it and reviews it and decides maybe
8 this emissions unit should not be moving into
9 the particular site?

10 MR. DESAI: That is exactly the
11 intent, correct, is to find out where it is
12 going to be located, located at the site of
13 Title IV or not, is it going to be located at
14 the federally enforced -- to a source who has a
15 federally enforceable state already permitting.

16 MR. RAO: So, it is critical that they
17 get this notification prior to the move?

18 MR. DESAI: That is definitely the
19 requirement, yes. It is critical to an extent
20 that if they don't get that notification prior
21 to the -- prior to moving, then they will be
22 considered as operating without construction and
23 operating permit.

24 MR. RAO: Okay. Because did I

L.A. REPORTING, 312-419-9292

19

1 understand correctly when you said earlier that
2 when the owner or operator of an emissions unit
3 is planning on moving and when they send you
4 something by certified mail, should it reach the
5 agency three days prior to the move or is it
6 okay if it's postmarked three days?

7 MR. DESAI: At the present time, we're
8 proposing based on postmarked three days prior

9 to moving.

10 MR. RAO: So, what if the notification
11 doesn't reach you for like 10 days or so, I
12 mean, after the unit has moved, will that be a
13 problem?

14 MS. DOCTORS: No, because we
15 addressed this at our first hearing, while if we
16 get -- when it comes in it will be reviewed,
17 whenever it reaches us, but because of how our
18 permitting system works and how this works this
19 is just a notification. It's not a permit
20 application where we can reject. If the
21 notification shows that they will be moving to
22 an inappropriate site or doing something that
23 isn't in conformance with the regulations, then
24 it -- whether we receive the notification prior

L.A. REPORTING, 312-419-9292

20

1 to the move or after the move it still goes to
2 our compliance unit for an inquiry. So, it
3 would go through our steps rather than us
4 calling them on the phone and saying, no, you
5 can't move because there isn't -- once they
6 notify us, they can move, there is no further
7 action by the agency.

8 MR. RAO: Okay.

9 MR. DESAI: I can further add on that
10 one.

11 Let's say we received the
12 notification, it's postmarked correctly and it
13 is still one week or maybe two weeks later, then
14 we determine -- we find out that the source has
15 moved to a location which just happens to be
16 that of Title IV, then, obviously, subject for
17 enforcement action does not -- operating without
18 a permit and also being for the Title 5.

19 MR. RAO: Thank you for the
20 clarification.

21 HEARING OFFICER MEYERS: Does the
22 board have any further questions for the
23 proponent at this time?

24 MR. LAWTON: I have none.

L.A. REPORTING, 312-419-9292

21

1 HEARING OFFICER MEYERS: At this time
2 I would like to take a 20 minute recess to allow
3 any late comers time to join us and contribute
4 anything that they may have at this time. It is
5 by my watch 5 minutes to 11:00 o'clock a.m.
6 We'll reconvene at 11:15 a.m.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Thank you.

(Off the record.)

HEARING OFFICER MEYERS: All right.

We're now back on the record after a 20 minute break. It is 11:15 a.m. and we have no further members of the public, actually, no members of the public at all in the audience with us today.

Are there any further questions, last minute questions for the agency? Since there are no further questions for the agency and we have no further matters here to discuss, I believe that we can close up the hearing.

As a final reminder the transcript will be available on line, on the board's Website or you can feel free to ask the court reporter with us here today for a copy of the transcript as well.

As a note on the order, we did open up

L.A. REPORTING, 312-419-9292

22

1
2
3
4
5

for discussion any questions regarding the economic impact and DECA, however, we have received no comments here today on that issue. And we welcome any comments in this regard during our public comment period, which, once

5 reporter doing business in the City of Chicago;
6 that she reported in shorthand the proceedings
7 given at the taking of said hearing, and that
8 the foregoing is a true and correct transcript
9 of her shorthand notes so taken as aforesaid,
10 and contains all the proceedings given at said
11 hearing.

12

13

14

ROSEMARIE LA MANTIA, CSR
License No. 84 - 2661

15

16

Subscribed and sworn to before me
this day of , 2002.

17

18

Notary Public

19

20

21

22

23

24