

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAY 10 2010

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)

PROCEDURAL RULES FOR)
AUTHORIZATION UNDER P.A. 95-115)
(REGULATION OF PHOSPHORUS IN)
DETERGENTS ACT): NEW 35 ILL.ADM.)
CODE 106.SUBPART H)

R10-19
(Rulemaking-Procedural)

NOTICE

ORIGINAL

John Therriault, Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste. 11-500
Chicago, Illinois 60601

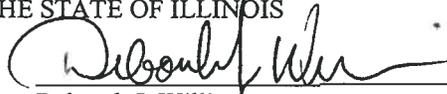
Kathleen Crowley, Hearing Officer
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste 11-500
Chicago, Illinois 60601

PC# 1

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the First Notice Comments of the Illinois Environmental Protection Agency on behalf of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By:


Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATE: May 6, 2010
Illinois Environmental
Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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FIRST NOTICE COMMENTS OF THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
("Illinois EPA" or "Agency"), by and through one of its attorneys, Deborah J. Williams,
and hereby respectfully submits to the Illinois Pollution Control Board ("Board") its
Comments in the above-captioned regulatory proceeding. In support thereof, the Illinois
EPA states as follows:

Background and Introduction

On March 18, 2010, the Board adopted a First Notice Opinion and Order creating
procedural regulations to implement Public Act 95-115 (Regulation of Phosphorus in
Detergents Act). The First Notice proposal was published in the Illinois Register on
April 16, 2010. 34 Ill. Reg. 5545 (Issue 16).

Public Act 95-115 took effect on August 13, 2007 and directs the Board to
"promulgate rules for the administration and enforcement of the provisions of this
Section." 415 ILCS 92/5(d)(2008). The Board has adopted and published a First Notice
proposal in this rulemaking docket to comply with this mandate.

Comments on the Board's First Notice Proposal

The Regulation of Phosphorus in Detergents Act was passed by the legislature as a stand-alone Public Act and not an amendment to the Environmental Protection Act. 415 ILCS 92/1 *et seq.* Beginning in July of 2010, the Regulation of Phosphorus in Detergents Act prohibits the use, sale, manufacture and distribution of certain cleaning agents containing more than 0.5% elemental phosphorus by weight. 415 ILCS 92/5(a)(2008). This Act also provides an extensive list of cleaning agents exempt from this prohibition. 415 ILCS 92/5(c) and (d).

In Section 5(e), this Act provides authority to the Board to do the following:

“The Illinois Pollution Control Board may authorize the use of additional cleaning agents that contain phosphorus of an amount exceeding 0.5% by weight upon finding that there is no adequate substitute for that cleaning agent or that compliance with this Section would otherwise be unreasonable or create a significant hardship on the user. The Illinois Pollution Control Board shall promulgate rules for the administration and enforcement of the provisions of this Section.”

415 ILCS 95/5(e)(2008). There is no specific grant of authority or delegation of duties to the Illinois EPA in this statute.

The Board has determined that compliance with the requirements of the Regulation of Phosphorus in Detergents Act will be met by adoption of procedural rules to address requests for authorizations to allow the continued use (after July 1, 2010) of cleaning agents otherwise prohibited by the statute. The Board has also determined to adopt a new Subpart H to be entitled “Authorizations Under the Regulation of Phosphorus in Detergents Act” to the existing Part 106 of its procedural rules entitled “Proceedings Pursuant to Specific Rules or Statutory Provisions.”

The Illinois EPA supports the goals of the Regulation of Phosphorus in Detergents Act and generally supports the Board's actions in this proceeding, including the content of the proposed procedural rules. However, the Agency would like to comment on the role afforded to the Agency in the proposed rules. A few sections of the proposed regulations highlight a role for the Agency in the proceedings covered by 35 Ill. Adm. Code 106.Subpart H. Section 106.800(b) provides that the Agency must be named as the Respondent. Section 106.804 requires the petitioner to serve a copy of the petition for authorization with the Agency. Section 106.808 allows, but does not require, the Agency to file a response to any petition in which it has not joined as co-petitioner. Finally, Section 106.810 allows the Agency (and any other interested person) to request a hearing on the petition.

The Illinois EPA is in support of the language stipulating a role for the Agency in these new proceedings with the exception of the following language in subsection 106.800(b):

“Parties. The person filing the petition for authorization must be named the petitioner and the Agency must be named the respondent.”

In the event the Board receives a petition under the Regulation of Phosphorus in Detergents Act, the Agency intends to provide any assistance to the Board that it has the staff expertise and resources to provide. Because water quality impacts are not one of the factors the Board is directed to consider in these proceedings, it is possible the Agency will not have the necessary expertise to advise the Board on how to proceed. In most cases, the Petitioner would be presenting evidence regarding the adequacy of substitute cleaning agents or the economic hardship imposed by the statute, without regard to potential negative environmental impacts. For these reasons, the Agency agrees with the

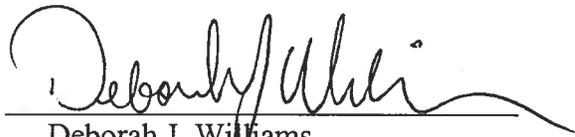
Board's decision to require service of the Petition upon the Agency and to allow the Agency the opportunity to file a response and request a hearing. However, the Regulation of Phosphorus in Detergents Act does not specifically provide for the designation of the Agency as a respondent in these proceedings and the Agency is concerned about the potential implications of the Board's language making the Agency a necessary party in any proceeding initiated under the Regulation of Phosphorus in Detergents Act. Therefore, the Agency requests the Board delete the phrase "and the Agency must be named the respondent" from proposed 35 Ill. Adm. Code 106.800(b).

Conclusion

The Illinois EPA appreciates the opportunity to comment on these proposed rules and commends the Board for its efforts in developing procedures for this new program to limit the use of phosphorus in cleaning agents. The Agency hopes the Board will take its comments into account in developing its Second Notice Opinion and Order in this matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

May 6, 2010

1021 N. Grand Ave. E
P.O. Box 19276
Springfield, Illinois 62794-9276

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

ORIGINAL

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached First Notice Comments of the Illinois Environmental Protection Agency of Attorney, to whom they are directed, by placing a copy of each in an envelope addressed to:

John Therriault, Assistant Clerk
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste. 11-500
Chicago, Illinois 60601

Kathleen Crowley, Hearing Officer
Pollution Control Board
James R. Thompson Center
100 W. Randolph, Ste 11-500
Chicago, Illinois 60601

and mailing them (First Class Mail) from Springfield, Illinois on may 6, 2010, with sufficient postage affixed as indicated above.

Meredith Kelly

SUBSCRIBED AND SWORN TO BEFORE ME

This 6th day of May - 2010

Brenda Boehner
Notary Public

