

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2010

IN THE MATTER OF:)
)
PROPOSED AMENDMENT TO) R10-18
PROCEDURAL RULES ON HEARINGS IN) (Rulemaking – Procedural)
IDENTICAL IN SUBSTANCES)
RULEMAKINGS)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

The Board today proposes an amendment to the Board’s procedural rules for second notice with the Joint Committee on Administrative Rules. The proposed amendment would allow videoconference hearings to be held in rulemaking proceedings conducted pursuant to Section 7.2 of the Environmental Protection Act (Act) (415 ILCS 5/7.2 (2008)). Rules adopted by the Board under Section 7.2 of the Act are identical-in-substance to federal regulations.

The procedural rule amendment proposed for second notice is unchanged from first notice, other than to reflect a change in citation form requested by the Joint Committee on Administrative Rules (JCAR). Below, the Board first describes the procedural background of this proceeding. The Board then discusses the reasons for the proposed rule amendment and the one public comment received by the Board, which was filed by the Illinois Environmental Protection Agency (Agency) in support of the proposal.

PROCEDURAL BACKGROUND

On January 21, 2010, the Board proposed the rule amendment for first notice, inviting public comment. The proposed rule amendment was published in the *Illinois Register* on February 16, 2010. See 34 Ill. Reg. 2422 (Feb. 16, 2010). Publication in the *Illinois Register* began a 45-day public comment period. See 5 ILCS 100/5-40(b) (2008). The Agency filed a public comment (PC 1) on February 24, 2010. No other public comments were filed. The Board has received no request to hold a public hearing in this rulemaking. As indicated in the Board’s first notice opinion and order, a public hearing is not required for this proposed procedural rule amendment. See 5 ILCS 100/5-40(b) (2008); see also 415 ILCS 5/26, 27(b) (2008).

DISCUSSION

The Board has traditionally held public hearings at one location in rulemakings that amend the definition of volatile organic material (VOM) pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)). The Board held these hearings as required by Section 110(a) of the Clean Air Act (42 U.S.C. § 7410(a) (1990), which requires the State to conduct a public hearing before submitting an amendment of the State Implementation Plan (SIP) to the United States Environmental Protection Agency (USEPA) for review and approval. Amendments to the

Illinois definition of VOM, which update the State definition to correspond with the latest version of the corresponding federal definition codified by the USEPA at 40 C.F.R. § 51.100(s), are amendments that may be submitted to amend the SIP. These hearings are generally brief with little to no testimony placed in the record. *See, e.g.,* Definition of VOM Update, USEPA Amendments (January 1, 2009 through June 30, 2009), R10-7 (Jan. 7, 2010); Definition of VOM Update, USEPA Amendments (January 1 through June 30, 2007), R08-6 (Jan. 10, 2008); Definition of VOM Update, USEPA Amendments (July 1, 1997 through April 9, 1998), R98-17 (June 17, 1998).

The Board has the ability to videoconference between the Chicago Offices of the Board and the Springfield Offices of the Board. The Board believes that holding these types of hearings via videoconference will allow more economical participation by the public and government officials without hampering the proceedings.

The Board is not required to hold hearings in the other types of rulemakings authorized by Section 7.2 of the Act (*e.g.*, underground injection control rules, underground storage tank rules) (415 ILCS 5/7.2 (2008)) and has not previously done so. However, there is the possibility that a hearing in a future rulemaking pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)) may serve the public interest. Therefore, the Board proposes to amend the procedural rules to allow the Board to hold these limited types of hearings in rulemakings pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)) via videoconference. Specifically, the Board proposes to add a new subsection (c) to Section 102.412 (35 Ill. Adm. Code 102.412) of the Board's procedural rules, which would read as follows: "If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the Act [415 ILCS 5/7.2], the hearing may be held by videoconference."

The Agency supports the Board's proposed procedural rule amendment. PC 1 at 1. The Agency acknowledges that Section 110(a) of the Clean Air Act (42 U.S.C. § 7410(a) (1990)) requires states to hold a public hearing before submitting a SIP revision to USEPA. *Id.* As an aside, the Agency notes that USEPA amended the federal public hearing regulations in 2007 so that states do not always have to hold a public hearing on a SIP revision but can instead provide the public with notice and an opportunity to request a public hearing. PC 1 at 2, citing 40 C.F.R. § 51.102(a) (2007). The Agency believes the Board's procedures are sufficient to satisfy federal SIP requirements. PC 1 at 2. The Agency further supports the Board's potential use of videoconference hearings in non-Clean Air Act identical-in-substance rulemakings, "to allow for the more economical participation of the public and government officials." *Id.*

The Board will proceed to second notice with this amendment. The Board received only one comment and that was in support of the Board's proposal. Therefore, the Board finds that proceeding to second notice is warranted.

CONCLUSION

The Board proposes for second notice an amendment to the Board's procedural rules that will allow the Board to hold hearings via videoconference in rulemakings proposed pursuant to Section 7.2 of the Act (415 ILCS 5/7.2 (2008)).

ORDER

The Board directs the Clerk to file the following procedural rule amendment with JCAR for second notice review.

TITLE 35: ENVIRONMENTAL PROTECTION
 SUBTITLE A: GENERAL PROVISIONS
 CHAPTER I: POLLUTION CONTROL BOARD

PART 102
 REGULATORY AND INFORMATIONAL HEARINGS AND PROCEEDINGS

SUBPART A: GENERAL PROVISIONS

Section	
102.100	Applicability
102.102	Severability
102.104	Definitions
102.106	Types of Regulatory Proposals
102.108	Public Comments
102.110	Waiver of Requirements
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SUBPART B: REGULATIONS OF GENERAL APPLICABILITY, RESOURCE
 CONSERVATION AND RECOVERY ACT (RCRA) AMENDMENTS, AND SITE-SPECIFIC
 REGULATIONS

Section	
102.200	Proposal for Regulations of General Applicability
102.202	Proposal Contents for Regulations of General Applicability
102. 204	Proposal of RCRA Amendments
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102.212	Proposal to Update Incorporations by Reference
102.214	Dismissal

SUBPART C: CLEAN AIR ACT AMENDMENTS (CAAA) FAST TRACK RULEMAKING

Section	
102.300	Applicability
102.302	Agency Proposal
102.304	Hearings

102.306 Prefiled Testimony

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS, PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING CONFERENCES, AND HEARINGS

Section

102.400	Service and Filing of Documents
102.402	Motions, Production of Information, and Subpoenas
102.404	Initiation and Scheduling of Prehearing Conferences
102.406	Purpose of Prehearing Conference
102.408	Prehearing Order
102.410	Authorization of Hearing
102.412	Scheduling of Hearings
102.414	Hearings on the Economic Impact of New Proposals
102.416	Notice of Hearing
102.418	Record
102.420	Authority of the Hearing Officer
102.422	Notice and Service Lists
102.424	Prehearing Submission of Testimony and Exhibits
102.426	Admissible Information
102.428	Presentation of Testimony and Order of Hearing
102.430	Questioning of Witnesses

SUBPART E: CERTIFICATION OF REQUIRED RULES

Section

102.500	Agency Certification
102.502	Challenge to Agency Certification
102.504	Board Determination

SUBPART F: BOARD ACTION

Section

102.600	Revision of Proposed Regulations
102.602	Adoption of Regulations
102.604	First Notice of Proposed Regulations
102.606	Second Notice of Proposed Regulations
102.608	Notice of Board Final Action
102.610	Adoption of Identical-in-Substance Regulation
102.612	Adoption of Emergency Regulations
102.614	Adoption of Peremptory Regulations

SUBPART G: MOTIONS FOR RECONSIDERATION AND APPEAL

Section

102.700	Filing of Motions for Reconsideration
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102.702	Disposition of Motions for Reconsideration
102.704	Correction of Publication Errors
102.706	Appeal

SUBPART H: OUTSTANDING RESOURCE WATER DESIGNATION

Section	
102.800	Applicability
102.802	Petition
102.804	Petition Contents
102.806	Board Action

102.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing sections 5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 22.7(d), 27, 28, 28.2, 28.6, 29 and 41 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.2, 13(c), 13.3, 17.5, 22.4(a), 22.4(d), 27, 28, 28.2, 28.6, 29 and 41] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Originally adopted as Chapter 1: Procedural Rules, Part II: Regulatory and Other Nonadjudicative Hearings and Proceedings, in R70-4, 1 PCB 43, October 8, 197-; codified at 6 Ill. Reg. 8357; amended in R84-10 at 9 Ill. Reg. 1398, effective January 16, 1984; Part repealed, new Part adopted in R88-5(B) at 14 Ill. Reg. 9210, effective May 24, 1990; amended in R90-16 at 14 Ill. Reg. 20471, effective December 11, 1990; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 587, effective January 1, 2001; amended in R01-13 at 26 Ill. Reg. 3498, effective February 22, 2002; amended in R04-24 at 29 Ill. Reg. 8776, effective June 8, 2005; amended in R10-18 at 33 Ill. Reg. _____, effective _____.

SUBPART D: SERVICE AND FILING OF DOCUMENTS, MOTIONS, PRODUCTION OF INFORMATION, SUBPOENAS, PREHEARING CONFERENCES, AND HEARINGS

Section 102.412 Scheduling of Hearings

- a) Except as otherwise provided by applicable law, *no substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned.* In the case of site-specific rules, a public hearing will be held in the affected county. Except as otherwise provided by applicable law, *in the case of state-wide regulations, hearings shall be held in at least two areas.* [415 ILCS 5/28(a)]
- b) If the proponent or any participant wishes to request a hearing beyond the number of hearings specified by the hearing officer, that person must demonstrate, in a motion to the hearing officer, that failing to hold an additional hearing would result in material prejudice to the movant. The motion may be oral, if made at hearing or written. The movant must show that he exercised due diligence in his participation in the

proceeding and why an addition hearing, as opposed to the submission of written comments pursuant to Section 102.108 of this Part, is necessary.

- c) If a hearing is scheduled in a rulemaking proposed pursuant to Section 7.2 of the Act [415 ILCS 5/7.2], the hearing may be held by videoconference.

(Source: Amended at 34 Ill. Reg. _____, effective _____.)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 17, 2010, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board