

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2011

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
REASONABLY AVAILABLE CONTROL) R11-23
TECHNOLOGY (RACT) FOR VOLATILE) (Rulemaking - Air)
ORGANIC MATERIAL EMISSIONS FROM)
GROUP II AND GROUP IV CONSUMER &)
COMMERCIAL PRODUCTS: PROPOSED)
AMENDMENTS TO 35 ILL. ADM. CODE)
211, 218, and 219)

ORIGINAL

HEARING OFFICER ORDER

The first hearing in this “fast-track” rulemaking docket took place as scheduled on Wednesday, April 27, 2011, and the Board received the transcript (Tr.) later that day.

As required by Section 28.5(f) of the Environmental Protection Act (Act), the Board scheduled a second hearing beginning Wednesday, May 18, 2011, in Chicago. Public Act 96-308, eff. Aug. 11, 2009 (P.A. 96-308) (re-enacting repealed Section 28.5). Section 28.5(f)(1) provides that, “[w]ithin 7 days after the first hearing, any person may request that the second hearing be held.” P.A. 96-308. Section 102.304(c) of the Board’s procedural rules provides in pertinent part that “[t]he request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.” 35 Ill. Adm. Code 102.304(c). No person requested on the record that the second hearing be held as scheduled. *See* Tr. at 24-26.

Accordingly, the Board held open the statutory seven-day period during which “any person may request that the second hearing be held.” P.A. 96-308. A hearing officer order dated April 27, 2011, required that the request be made in writing to the Board on or before Wednesday, May 4, 2011, and served upon the entities on the service list. Although the hearing officer order provided that a request may be filed electronically, it required that any electronic or fax filings must be received by the Clerk’s Office no later than 4:30 PM on that date. *See* 35 Ill. Adm. Code 101.302(d).

On May 3, 2011, Mr. James T. Sell on behalf of the American Coatings Association (ACA) electronically submitted a filing in which he “respectfully requests that the Illinois Pollution Control Board hold a second hearing in the matter of Case R11-23.” As the Board has received a timely request, the second hearing will take place as originally scheduled.

The hearing officer must require that testimony for the second hearing be pre-filed as originally required on or before Friday, May 6, 2011. *See* P.A. 96-0308 (requiring pre-filing at least 10 days before hearing). For the purpose of serving pre-filed testimony for the second hearing on the Board, the “mailbox rule” at 35 Ill. Adm. Code 101.300(c) does not apply. The Board’s Clerk must receive this pre-filed testimony before the close of business on Friday, May

6, 2011. Although pre-filed testimony may be filed electronically through COOL, all electronic or approved fax filings must be received by the Clerk's Office no later than 4:30 PM on that date. Pre-filed testimony must also be served on all persons named on the service list as of 4:30 PM on Tuesday, May 3, 2011. Persons wishing to pre-file testimony for the second hearing may obtain a copy of the service list by contacting the hearing officer after 9:00 AM on Wednesday, May 4, 2011.

IT IS SO ORDERED



Timothy J. Fox, Hearing Officer
Illinois Pollution Control Board
100 West Randolph St., Suite 11-500
Chicago, Illinois 60601
312-814-6085
312-814-3669 (fax)
foxt@ipcb.state.il.us