

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 16 2013

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
VAPOR RECOVERY RULES:)
AMENDMENTS TO 35 ILL. ADM.)
CODE PARTS 201, 218, AND 219)

R13-18
(Rulemaking - Air)

NOTICE OF FILING



ORIGINAL

TO: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Thomas Davis, Bureau Chief
Environmental Bureau
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706

Richard R. McGill, Jr.
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

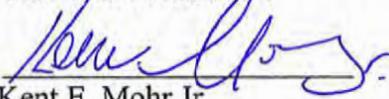
Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Ted Tiberi
ARID Technologies, Inc.
323 S. Hale Street
Wheaton, Illinois 60187

PLEASE TAKE NOTICE that I have today filed with the Office of the Pollution Control Board the MOTION TO STRIKE ARID TECHNOLOGIES, INC.'S PUBLIC COMMENT of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Kent E. Mohr Jr.
Assistant Counsel
Division of Legal Counsel

DATED: August 12, 2013

1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
(217) 782-9143 (TDD)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
SEP 16 2013
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
VAPOR RECOVERY RULES:) R13-18
AMENDMENTS TO 35 ILL. ADM.) (Rulemaking - Air)
CODE PARTS 201, 218, AND 219)

MOTION TO STRIKE ARID TECHNOLOGIES, INC.'S PUBLIC COMMENT

NOW COMES the Proponent, the Illinois Environmental Protection Agency (Illinois EPA), by its attorney, and pursuant to 35 Ill. Adm. Code 101.500, 101.502, 102.402, and 102.420 moves that the Hearing Officer strike ARID Technologies, Inc.'s (ARID) public comment from the record. In support of its Motion, the Illinois EPA states as follows:

1. On March 18, 2013, the Illinois EPA filed its regulatory proposal to amend the vapor recovery rules, which included a Motion for Expedited Review, with the Illinois Pollution Control Board (Board).
2. On April 4, 2013, the Board accepted the Illinois EPA's proposal for hearing, granted the Illinois EPA's Motion for Expedited Review, and adopted the proposed amendments for first notice.
3. Hearings were held on May 8, 2013 and June 5, 2013. No comments in opposition to the proposal were received at either hearing.
4. At the conclusion of the second hearing and by Order entered June 17, 2013, the Hearing Officer set a deadline of July 8, 2013 for filing public comments.
5. On July 16, 2013, the Hearing Officer entered an Order re-opening the public comment period solely for the purpose of receiving public comment from the Illinois EPA in response to a public comment filed on July 8, 2013. The Hearing Officer directed the Illinois

EPA to file its public comment by July 31, 2013. The Illinois EPA timely filed its responsive public comment on July 31, 2013.

6. On September 9, 2013, ARID filed a public comment followed by an Addendum on September 10, 2013.

7. It is the position of the Illinois EPA that ARID's public comment should be stricken from the record in this matter for any one of a number of reasons as discussed below.

8. First, ARID's public comment should be stricken from the record because it was not filed or served in accordance with Board rules or the Hearing Officer's Order dated June 17, 2013. Board rules require documents to meet certain filing requirements. One such requirement is that all documents filed be served in accordance with Subpart C of 35 Ill. Adm. Code Part 101. 35 Ill. Adm. Code 101.302(f). The Clerk of the Board is required to refuse for filing any document that does not comply with the minimum requirements of 35 Ill. Adm. Code 101.302. 35 Ill. Adm. Code 101.302(a). Subpart C, specifically Section 101.304, among other things, prescribes the methods of service and the requirement for an affidavit or certificate of service. 35 Ill. Adm. Code 101.304. In addition, Board rules governing public comments require those comments to be filed with the Clerk and served in accordance with 35 Ill. Adm. Code 101, Subpart C, upon, among others, the Illinois EPA, and specify that comments not timely filed or properly served will not be considered except as allowed to prevent material prejudice. 35 Ill. Adm. Code 102.108(c) and (d). Similarly, any motion is required to be filed and served in accordance with 35 Ill. Adm. Code 101, Subpart C. 35 Ill. Adm. Code 101.500(b). Furthermore, the Hearing Officer's Order dated June 17, 2013 required public comments to be served on those persons on the service list, which includes the Illinois EPA. ARID's public comment was not properly served on the Illinois EPA and it did not contain an affidavit or certificate of service.

Therefore, ARID's public comment does not meet the minimum requirements of Section 101.302, it violates Section 101.304, 102.208 and 101.500 (if it is in fact a motion), and it violates the Hearing Officer's Order dated June 17, 2013. Moreover, ARID's public comment is in the form of an email when it should have been in the form of a motion for leave pursuant to 35. Ill. Adm. Code 101.500. ARID should be held to the same standard to which the Illinois EPA is held. Material prejudice will result if ARID's public comment is accepted, as discussed further below.

9. Second, ARID's public comment should be stricken from the record because it violates the Hearing Officer's Order dated June 17, 2013. This Order established July 8, 2013 as the end of the public comment period. Thus, all public comments should have been filed by July 8, 2013¹. Section 101.628 allows for public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. 35 Ill. Adm. Code 101.628(c). Further, Section 102.108(d) of the Board's rules specifies that late filed comments will not be considered except as allowed to prevent material prejudice. 35 Ill. Adm. Code 102.108(d). ARID's public comment was filed on September 9, 2013 - more than two months late. All other parties have had to abide by the established public comment deadlines. If ARID's public comment is accepted at this late time, it renders public comment deadlines meaningless, and material prejudice will result, as discussed further below.

10. Third, as part of its initial filing, the Illinois EPA filed a Motion for Expedited Review (Mot. Exp.) explaining that expedited review was necessary due to the emissions disbenefit associated with maintaining the Stage II program beginning in 2014; to allow gasoline

¹ As noted above, the Hearing Officer did re-open the public comment period for the limited and sole purpose of requiring the Illinois EPA to respond to a public comment filed on July 8, 2013, and the Illinois EPA timely and properly filed a response as required.

stations beginning operations on January 1, 2014 or later to not install unnecessary and expensive Stage II equipment; and to allow existing gasoline stations to begin decommissioning Stage II equipment on this date and begin realizing a recurring annual cost savings. Mot. Exp. at 8-9. In its Proposed Rule, First Notice Opinion and Order (Op. and Ord.) dated April 4, 2013, the Board granted the Illinois EPA's Motion for Expedited Review finding that the emission reduction benefits for the State and economic savings for gasoline stations justified establishing a January 1, 2014 effective date. Op. and Ord. at 3. If ARID's public comment is erroneously accepted and debated, it will delay the adoption of this rulemaking substantially such that a January 1, 2014 effective date will most certainly not be possible. If this occurs, the State and its citizens will be materially prejudiced as it relates to the emissions disbenefit of maintaining the Stage II program, and affected sources will be materially prejudiced through the existing requirement to install expensive and unnecessary State II equipment at gasoline stations and incur the costs of maintaining such systems.

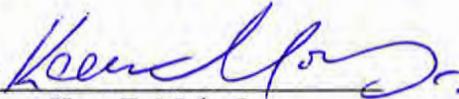
11. Fourth, in its public comment, ARID presents arguments and comments in favor of a new regulatory program – an enhanced Stage II program. ARID's arguments and comments are not based on evidence contained in the record. This issue has not been raised in this proceeding - it has not been subject to public notice, comment, or hearing. Therefore, ARID's public comment should be stricken from the record as violating 35 Ill. Adm. Code 101.628(c)(2). If ARID's public comment is erroneously allowed, the Illinois EPA respectfully requests that it be provided an opportunity to respond to the merits of ARID's public comment, especially as it raises issues that are outside of the record in this proceeding, and that additional hearings be strongly considered to provide proper due process. If the Illinois EPA is not allowed the opportunity to respond to ARID's public comment, it will be materially prejudiced.

12. As required by 35 Ill. Adm. Code § 101.512, this Motion is accompanied by an Affirmation attesting that the facts cited herein are true.

WHEREFORE, for any one or more of the reasons set forth above, the Illinois EPA respectfully requests that the Hearing Officer grant this Motion and strike ARID's public comment from the record. In the alternative, if the Hearing Officer accepts ARID's public comment, the Illinois EPA respectfully requests that the Hearing Officer provide the Illinois EPA with the opportunity to respond to the merits of ARID's public comment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

Kent E. Mohr Jr.
Assistant Counsel
Division of Legal Counsel

DATED: August 12, 2013

1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

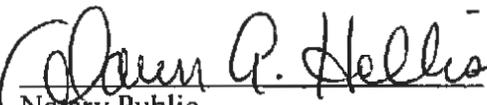
IN THE MATTER OF:)
)
VAPOR RECOVERY RULES:) **R13-18**
AMENDMENTS TO 35 ILL. ADM.) **(Rulemaking - Air)**
CODE PARTS 201, 218, AND 219)

AFFIRMATION

I, Kent E. Mohr Jr., under oath, hereby state and affirm that I am an Assistant Counsel for the Illinois Environmental Protection Agency and that the facts cited in the foregoing Motion to Strike are true and correct to the best of my information and belief.


Kent E. Mohr Jr.
Assistant Counsel
Division of Legal Counsel

SUBSCRIBED AND SWORN TO BEFORE ME
this 12th day of September 2013


Notary Public



STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS

RECEIVED
CLERK'S OFFICE
SEP 16 2013
STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached MOTION TO STRIKE ARID TECHNOLOGIES, INC.'S PUBLIC COMMENT of the Illinois Environmental Protection Agency upon the following persons,

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

Thomas Davis, Bureau Chief
Environmental Bureau
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706

Richard R. McGill, Jr.
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Office of Legal Services
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

Ted Tiberi
ARID Technologies, Inc.
323 S. Hale Street
Wheaton, Illinois 60187

by mailing a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on August 12, 2013.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Kent E. Mohr Jr.
Assistant Counsel
Division of Legal Counsel

DATED: August 12, 2013

1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544