

PC# 4

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
 PROCEDURAL RULE AMENDMENTS:) R 16-17
 PROPOSED AMENDMENTS TO) (Rulemaking – Procedural)
 35 ILL. ADM. CODE 101 THROUGH 125)

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NOTICE OF FILING

STATE OF ILLINOIS
 Pollution Control Board

To: Daniel Robertson, Hearing Officer
 Illinois Pollution Control Board
 100 West Randolph Street
 James R. Thompson Center, Suite 11-500
 Chicago, Illinois 60601

 ORIGINAL

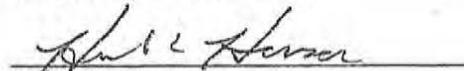
John J. Kim, General Counsel
 Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield IL 62794-9276

Brent R. Krebs
 Illinois Department of Natural Resources
 One Natural Resources Way
 Springfield IL 62702-1271

Matthew J. Dunn
 Division Chief of Environmental Enforcement
 Office of the Attorney General
 69 W. Washington Street, Suite 1800
 Chicago, IL 60602

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following document: COMMENTS OF PODLEWSKI & HANSON P.C. a copy of which is hereby served upon you.

Respectfully submitted,


 Heidi E. Hanson

Dated: February 18, 2016

Heidi E. Hanson
 Podlewski & Hanson P.C.
 4721 Franklin Ave, Suite 1500
 Western Springs, IL 60558-1720
 (708) 784-0624

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COMMENTS OF PODLEWSKI & HANSON P.C.

Podlewski & Hanson P. C. respectfully offers the following comments on the Board’s December 17, 2015 First Notice Rulemaking in R16-17.

The principals of Podlewski & Hanson P. C. have each been practicing before the Illinois Pollution Control Board for at least 35 years. They note that the Board is far in advance of many of the other forums they have practiced before in its modernity and efficiency. They are particularly pleased with the ease of use of the COOL system.

As a general comment, we are concerned by the apparent presumption that all potential participants in Board proceedings have the use of a computer, and are computer literate. According to the U. S. Census Bureau’s “Computer and Internet Use in the United States: 2013” (census.gov) (page 10) over 11% of Illinois residents live in a household without a computer. To require filings that can only be accomplished by a computer or the viewing of exhibits that can only be seen on a website is to effectively disenfranchise a large number of Illinoisans and may lead to due process issues. We recommend that paper filings continue to be allowed as an option.

Email Service

While we generally support the option of email service, we are concerned that proposed rule 35 Ill Adm. Code 101.1070 subparts (a)(2) and (a)(3) may result in parties agreeing to email service without realizing that they have done so. An attorney may provide her email to other parties during a hearing conference as a matter of convenience without intending to consent to email service, or she may include her email address on her appearance solely as a matter of convenience to the other parties. We suggest that these two subparts not be adopted and that email service only be presumed to have been consented to when a party has filed a Consent to Receipt of E-Mail Service with the clerk or has filled out form to join a Notice or Service list for a regulatory proceeding, which form would presumably warn that giving an email address would result in consent to email service.

The Board could also accomplish its purpose of encouraging the use of email, and avoid inadvertent consent, simply by redesigning the appearance form to allow for a “check-off” consent to receipt of email services option.

Digital Records and Technical Petitions

As proposed, 35 Ill. Adm. Code 101.302(h)(2) would require that all variance petitions and adjusted standards be filed electronically and in a specific format. The Board’s concern seems to be that such petitions may be very large, however that is not always the case. We urge the Board to

make this an option rather than a requirement and to continue to accept paper filings. As an alternative the Board could require that such petitions must be filed electronically if they exceed 100 pages.

Reduced Paper Copies

Contested cases, and to a lesser extent regulatory proceedings, that involve an interested public are often contentious and unpredictable. Having paper copies of questions and prefiled testimony available serves the function of allowing members of the public to better follow what is happening in the proceeding, although it does often result in paper being thrown away afterward. The Board's proposed rules assume that everyone attending the hearing will have copied all of the relevant documents off the Board's website or will come armed with electronic devices that they can use to reference the documents on COOL. We have not yet reached the point where such devices and the ability to use them is universal. Requiring that one CD rather than paper courtesy copies be brought to the hearings is likely to result in angry participants who feel that they are being discriminated against and denied the ability to fully participate in the hearing.

Video Conference Hearings

It would be helpful to have more information on how the Board intends to handle video conference hearings. Who will bear the cost of the video conferencing? Will they take place only at Board offices? Would any commercial video conferencing site be acceptable? May parties "Skype" from their offices? Will there be a Board employee available at the video conferencing site where there are a large number of parties involved? How will potential abuses such as a witness is being provided answers by someone "off camera," be dealt with?

Appeal Timeframes – Final Board Orders

As proposed, Rule 101.300(d)(3) would read in pertinent part "the effective date of the new rule... is presumed to be the date of service". We submit that it would be clearer if it read "the date of service is presumed to be the effective date of the new rule."

Also referencing only the "effective date" could cause confusion in those cases when a rule is adopted but is not intended to be immediately effective, for example, when a later effective date is specified. To avoid this issue the rule should state that the service date is presumed to be the "effective date as published in the Illinois Register."

Hearing Locations

We agree with Board Member Glosser that holding hearings in counties other than the county where a source is located will impact the public's ability to attend the hearings. It will cause resentment in those members of the public who are inconvenienced. It may also result in more enforcement cases being brought in circuit court rather than before the Board. We understand that travel can be expensive, however, we would like to see the Board continue to hold hearings within the county of the site at issue.

Recycled Paper. We suggest that the Board consider eliminating the recycled paper rule, 35 Ill Adm. Code 101.302(g), and the definitions of "recycled paper" and "deinked stock". The rule

has served its purpose, and with the increased use of electronic filing, it is of little value. It now serves primarily as a trap for the unwary Board litigant. Furthermore, there is no practical means of determining whether an opposing party has actually used recycled paper. In addition, there have been questions raised as to whether it was properly adopted originally because it was adopted as a procedural rule rather than a substantive rule.

Elimination of Notice Form. The Board's rules specify that a pleading must be accompanied by both a Notice and a Proof of Service (35 Ill Adm. Code 101.302(b)(3), 101.304(b)(2), 101.400(a)(4), and 101.610(a)). After the initial filing, the Notice serves only as an archaic cover letter and (with the exception of 35 Ill Adm. Code 103.204) it is required to contain no information that is not also repeated in the pleading itself or in the Proof of Service. We ask that the Board consider eliminating the requirement that a Notice be filed with each pleading after the initial filing in a matter. Doing so would save time, paper, and space for the Board and those who appear before it.

Respectfully submitted,

Podlewski & Hanson



Heidi E. Hanson

Dated: February 18, 2016

Heidi E. Hanson
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(708) 784-0624

CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on the date of February 18, 2016 the attached COMMENTS OF PODLEWSKI & HANSON P.C.

Upon the following persons, by electronic filing before 4:30 this day:

Clerk's Office On-Line
Illinois Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

And by depositing same in the U. S. Postal Service mailbox at Western Springs, Illinois before 4:30 this day, February 18, 2016 with proper postage prepaid, upon the following persons:

Daniel Robertson, Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601

John J. Kim, General Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
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Springfield IL 62794-9276

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STATE OF ILLINOIS
Pollution Control Board

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FAX Cover Note

Date: February 18, 2016

To: John Theirault 1-312-814-3669

From: Heidi Hanson

Pages including this note: 6

RE:

This document may be privileged or confidential. If this fax has been sent to you in error please: 1) immediately contact the sender,

- 2) do not read the document(s) or make any copies, and
- 3) destroy the original telefax (s).

Your cooperation and courtesy in this matter are appreciated.

Note:

Thank You



Heidi Hanson