

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROCEDURAL RULE AMENDMENTS:)	R16-17
PROPOSED AMENDMENTS TO 35 ILL.)	
ADM. CODE 101 THROUGH 125)	(Rulemaking -Procedural)
)	

NOTICE OF FILING

John Therriault, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(ELECTRONIC FILING)

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

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

Daniel Robertson, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St.
Suite 11-500
Chicago, Illinois 60601
(Electronic filing)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: *Stephanie Flowers*

Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATE: 2-18-16
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROCEDURAL RULE AMENDMENTS:)	R16-17
PROPOSED AMENDMENTS TO 35 ILL.)	
ADM. CODE 101 THROUGH 125)	(Rulemaking –Procedural)
)	

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, Stephanie Flowers, and respectfully submits the following comments regarding the first notice proposal of the Illinois Pollution Control Board (“Board”) published in the Illinois Register on January 4, 2016. *See*, 40 Ill. Reg. 52.

I. BOARD’S REQUEST FOR COMMENT

In the Opinion and Order dated December 17, 2015, there are three specific instances where the Board requested the Agency to comment on the proposed amendments:

A) Section 101.302(h)(4)(A) - Regarding incorporations by reference for copyrighted material, the Agency supports the Board’s proposed revisions and agrees to provide the Board upon request either two extra originals of copyrighted documents or the copyright owner’s authorization for the Board to print two extra copies of copyrighted material.

B) Section 101.602(b) – Regarding publication of notice of hearing for State Implementation Plan (SIP) revisions in the Illinois Register and whether Board hearings in types of proceedings other than identical-in-substance and fast-track rulemakings are used to meet the public hearing requirement for SIP revisions, the Agency generally relies upon Board hearings to satisfy SIP submittal hearing requirements in proceedings that seek to amend, repeal, or obtain regulatory relief from rule provisions that are part of Illinois’ SIP and in proceedings that seek to

add regulations that will be submitted as SIP revisions. Such proceedings include rulemaking, variance, and adjusted standard proceedings. However, the Environmental Protection Act (“Act”) requires newspaper notice for public hearings in many of these proceedings, including rulemaking proceedings subject to Section 28 of the Act, and in those cases, publication in the *Illinois Register* alone will be insufficient.

The Agency requests clarification in the Board’s Second Notice Order as to whether the Board anticipates including public hearing notices in the *Illinois Register* for identical-in-substance and fast-track rulemakings alone, or intends to do so in general rulemakings as well, in conjunction with newspaper notices when required. The Agency also requests clarification as to how the proposed amendment in Section 101.602(b) comports with the requirement in Section 28(a) of the Act regarding public notice in a newspaper of general circulation.

With regard to the Agency’s experience with using the *Illinois Register* to publish notices of SIP-revision hearings (*e.g.*, Index Department submittal deadlines, hearing notices not appearing in the expected issue), to ensure that its notice of hearing is publishable from the Secretary of State’s standpoint, the Agency generally provides a draft notice to the Index Department for its review/comment and incorporates its suggested (normally stylistic) changes, if any. The Agency then either hand delivers the final notice to the Index Department by the publication deadline or, if time allows, mails it. As the notice is time-sensitive, the Agency generally notes in its cover letter the issue of the *Illinois Register* in which it intends the notice to be published. There have been rare instances when the notice did not appear in the expected issue, but generally such occurrences can be avoided through open communication with the Index Department. Per the Board’s request, Attachment #1 is an example of one of the Agency’s hearing-related submittals to the Index Department.

Federal regulations at 40 C.F.R. §51.102(d) require that notice of public hearing regarding a SIP submittal must be given at least 30 days prior to the hearing. As explained above, from a timing and resources standpoint, the Agency often relies upon the Board's hearing to satisfy the SIP submittal public hearing requirement. The Agency therefore requests that the Board add the following language to Section 101.602 and any other Sections the Board deems applicable. The Agency also notes that the word "to" in the last line of Section 101.602(b) was removed in the Board's First Notice Order, but not in the *Illinois Register* version of the proposal.

Section 101.602 Notice of Board Hearings

- (b) The Clerk will provide notice of all hearings, except for administrative citation hearings, in a newspaper of general circulation in the county in which the facility or pollution source is located, or where the activity in question occurred. Unless otherwise required by applicable law, when a hearing is to be held to satisfy the public hearing requirement of the Clean Air Act (42 USC 7401 *et seq.*) for State Implementation Plan revisions, the Clerk will give notice of the hearing by publication in the *Illinois Register* in lieu of newspaper notice. Notice must be published at least 21 days before the hearing. If the proceeding involves federal rules that the State has been given delegated authority to administer, or if the proceeding involves amending, repealing, or seeking regulatory relief from regulations that are part of Illinois' State Implementation Plan or involves adding regulations that will be submitted as revisions to Illinois' State Implementation Plan, notice must be published at least 30 days before the hearing.

C) Section 101.600(a) – Regarding hearing locations, other than the requirement of the Federal Public Hearing Regulations at 40 C.F.R. §25.5 which states that hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public, the Agency is unaware of additional requirements in federal laws, authorizations or agreements that would mandate the Board to include hearing location requirements in its procedural rules and has no further comment on whether the Resource Conservation and

Recovery Act ("RCRA") geographic requirement should be the language used elsewhere in the procedural rules.

The Agency is confident that if hearing officers are given the discretion to determine where hearings will be held in all instances, public participation would be facilitated. Furthermore, the Agency welcomes the opportunity to participate in hearings via videoconference and agrees this opportunity will substantially cut costs to the State for travel associated with its hearings.

II. ADDITIONAL COMMENTS FROM THE AGENCY

Overall the Agency supports the amendments that seek to expand email service and videoconferencing and reduce the number of copies (including copyrighted documents) that need to be provided to the Board, as these changes will save resources and staff time in rulemakings and regulatory relief proceedings. However, below are several changes suggested by the Agency.

1) Regarding copyrighted documents at Section 101.302(h)(4)(A), the Agency requests that the Board clarify that rulemaking proponents are required to comply with either subsection (h)(4)(A)(i) or subsection (h)(4)(A)(ii). This is stated in the Board's December 17, 2015, First Notice Order and the word "or" appears in the rule language accompanying the Board's First Notice Order; however, the "or" has disappeared from the proposed changes as published in the *Illinois Register*. The Agency requests the word "or" be added between the two options as described above.

2) Regarding administrative records, the Agency has been a proponent of filing electronic or scanned copies of administrative records with the Board since as early as 2006.

See, Ameren Energy Generating Company, Meredosia Power Station v. Illinois EPA, PCB 2006-69, February 16, 2006. Electronic filings minimize the hours required to make copies of records, particularly voluminous records, and have the added benefit of conserving paper resources and curtailing postage costs.

While the Agency generally supports the filing of administrative records on electronic storage devices, the Agency is concerned that the record must be filed in text-searchable Adobe PDF without exception. For most documents in an administrative record, this does not present a problem. However, some of the documents received and/or produced by the Agency are not text or not recognized as text, and therefore, these documents are not capable of being “text-searchable.” For instance, character recognition does not work for photographs, drawings, diagrams, many handwritten notes and many handwritten public comments.¹ In addition, the Board’s proposal does not consider an entire category of material that the Agency may rely upon in a permitting transaction or a regulatory proceeding in which expected air quality impacts are relevant. These are large alpha numeric data files that are associated with a variety of computer software used by the Air Quality Planning Section and are commonly referred to as air modeling files. These files are handled by the Agency as electronic data files rather than as paper documents. Depending on the air modeling performed, this category of material may, at times, be in excess of 70 GB of data and while this material may be filed on a compact disk or other portable electronic storage device, it is not material that can be filed with the Board in Adobe PDF, much less text-searchable Adobe PDF. Given such a large quantity of information in a particular administrative record may not be text searchable, the Illinois EPA is proposing the following revision to the Board’s proposed Section 105.116(a).

¹ It is also worth noting that the text of typewritten produced documents generated by the Agency in the 1970s, commonly referred to as “onion skin” documents, may only be searchable on Adobe Professional and not Adobe Reader.

Section 105.116 Record Filing

The State agency must file with the Board the entire record of its decision within 30 days after the filing of the petition for review, unless this Part provides otherwise, or the Board or hearing officer orders a different filing date. If the State agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. The State agency must file the record, to the extent technically feasible, in text-searchable Adobe PDF through COOL or on compact disk or other portable electronic data storage device pursuant to 35 Ill. Adm. Code 101.302(h)(2).

Furthermore, the Agency requests that similar language be added to the Board's proposed changes to Sections 101.302(h)(2), 102.424(e), and 125.208, for the same reasons set forth above.

3) Regarding Section 105.116(b), while not the subject of the current proposed rulemaking, the Board's requirement in 35 Ill. Adm. Code Section 105.116(b) requiring all records to be filed in chronological sequence creates an administrative burden for the Agency when the record is voluminous. Not all administrative records are maintained by the Agency in simple chronological order. As a matter of practice, the Agency first organizes its administrative record for any permitting transaction by category of material and chronologically within each category. The Agency has determined that it is much easier to locate documents if they are first organized by category, e.g., application material, modeling files, correspondence, and then organized chronologically. This is essential for the voluminous records that can be generated by construction permitting for major sources or Clean Air Act Permit Program ("CAAPP") permits. It is not unusual for these complicated permitting transactions to produce an administrative record in excess of 10,000 pages. As proposed, Section 105.116(b) would require the Bureau of Air to make a copy of its administrative record, particularly its lengthy records, prior to filing. The copy is necessary to allow the Agency to reorganize the record chronologically rather than chronologically by category of material prior to any filing with the Board. Given administrative

burdens imposed on the Agency by proposed Section 105.116(b) and the difficulty in locating an isolated document by date in a voluminous record, the Illinois EPA is proposing the following revision to the Board's proposed Section 105.116(b).

Section 105.116 Record Filing

The record must be arranged in chronological sequence or by category of material and chronologically within each category and sequentially numbered with the letter "R" placed before the number of each page. The record must be certified by the State agency. The certification must be entitled "Certificate of Record on Appeal". The Certificate must contain an index that lists the documents comprising the record and shows the page numbers upon which each document starts and ends. The Certificate of Record must be served on all parties by the State agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers

Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED: 2-18-16
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
stephanie.flowers@illinois.gov

ILLINOIS REGISTER

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PUBLIC INFORMATION

The Illinois Environmental Protection Agency ("Illinois EPA") Bureau of Air will hold a public hearing on Wednesday, December 16, 2015, at 10:00 a.m. in the Sangamo Room at the Illinois EPA's headquarters, 1021 North Grand Avenue East, Springfield IL. The public hearing will be held for the purpose of gathering public comments on the draft "Illinois Sulfur Dioxide (SO₂) Attainment Demonstration: Lemont, Lockport, and DuPage Townships (Cook/Will Counties) and Cincinnati, Pekin, and Hollis Townships (Pekin/Tazewell Counties)" ("Attainment Demonstration"), which sets forth the State's plan for attaining the 2010 SO₂ National Ambient Air Quality Standard. The Illinois EPA intends to submit the Attainment Demonstration to the United States Environmental Protection Agency as a revision to Illinois' State Implementation Plan ("SIP") under the Clean Air Act ("CAA"), 42 USC § 7401 *et seq.*

The hearing will be held in accordance with the provisions of the Illinois EPA's "Procedures for Informational and Quasi-Legislative Public Hearings," set forth at 35 Ill. Adm. Code 164. Any questions about the hearing procedures, requests for copies of the hearing rules, or other requests should be directed to Dean Studer, the Illinois EPA's Hearing Officer, at the address and telephone number listed below.

Dean Studer, Hearing Officer
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Telephone: 217/558-8280 or TDD: 217/782-9143

The Hearing Record will close on Friday, January 15, 2016. Written comments will be accepted but must be directed to Dean Studer at the address above, and must be physically received by January 15, 2016.

Copies of the proposed SIP revision may be viewed by the public during regular business hours (Monday through Friday 8:30 a.m. to 4:30 p.m., except for State holidays) at the following Illinois EPA offices: 1021 North Grand Avenue East, Springfield IL; 9511 Harrison Street, Des Plaines IL; and 412 SW Washington Street, Suite D, Peoria IL. No walk-in requests for copies of this material will be accommodated, unless advance notice is provided. Requests and public inquiries should be directed to Dean Studer at the address and phone number listed above.

This notice is intended to satisfy the requirements of Section 110(l) of the CAA regarding public notice for SIP submittals, 42 USC § 7410(l).

CERTIFICATE OF SERVICE

I, STEPHANIE FLOWERS, an attorney, do certify that I filed electronically with the Office of the Clerk of the Illinois Pollution Control Board the COMMENTS OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY and will cause the same to be served upon the following persons, by placing a true and correct copy in an envelope addressed to:

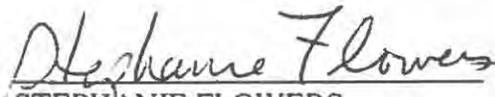
John Therriault, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(ELECTRONIC FILING)

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

Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

Daniel Robertson, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St.
Suite 11-500
Chicago, Illinois 60601
(Electronic Filing)

and mailing it by First Class Mail from Springfield, Illinois on February 18 with sufficient postage affixed.


STEPHANIE FLOWERS

DATE: 2-18-16
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544