

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOLUME I

IN THE MATTER OF:)
CLEAN FUEL FLEET PROGRAM:) R98-008
35 ILL. ADM. CODE 241) (Rulemaking - Air)

The following is a transcript of a rulemaking hearing held in the above-entitled matter, taken stenographically by LORI ANN ASAUSKAS, CSR, RPR, a notary public within and for the County of Cook and State of Illinois, before Amy Muran Felton, Hearing Officer, at 100 West Randolph Street, Room 11-500, Chicago, Illinois, on the 27th day of August, 1997, A.D., commencing at the hour of 10:00 o'clock a.m.

1 A P P E A R A N C E S :

2 HEARING TAKEN BEFORE:

3 ILLINOIS POLLUTION CONTROL BOARD,
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-49258 BY: MS. AMY MURAN FELTON,
9 HEARING OFFICER.10 ILLINOIS POLLUTION CONTROL BOARD MEMBERS PRESENT:
11 Mr. Joseph Yi

12

13 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MEMBERS
14 PRESENT:

15 Ms. Rachael L. Doctors

16 Mr. Darwin J. Burkhart

17 OTHER AUDIENCE MEMBERS PRESENT:

18 Mr. Scott Benson, USGSA

19 Mr. Philip S. Bush, Amoco Petroleum Products

20 Mr. Daniel S. LeFevers, Peoples Gas

21 Mr. Tony Lindsay, P.E, Nicor

22 Mr. Jeffrey L. Williams, Ivy Tech State College

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10 NO EXHIBITS MARKED

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1 THE HEARING OFFICER: Good morning. My name is
2 Amy Muran Felton. I am the hearing officer in this
3 proceeding.

4 I would like to welcome you to this hearing
5 entitled: In The Matter Of: Clean Fuel Fleet
6 Program, amendment to 35 Illinois Administrative Code
7 241, docketed by the Illinois Pollution Control Board
8 as R98-008.

9 Present today on behalf of the Illinois
10 Pollution Control Board and seated to my right
11 is Joseph Yi, the board member coordinating this
12 rulemaking.

13 As you have noticed already, on the table,
14 I have placed notice lists and service list signup
15 sheets. Please note that if your name is on the
16 notice list, you will receive copies of the board's
17 opinions and orders and all hearing officer orders.

18 If your name is on the service list, you will
19 not only receive copies of the board's opinions
20 and orders, but you will receive copies of all the
21 documents filed by all parties to this proceeding.

22 Keep in mind, however, that if your name is
23 on the service list, you are also required to serve
24 all parties to the service list with all documents

1 that you may file with the board. You are not
2 precluded from presenting testimony or questions at
3 hearing if your name is not on either of the lists.

4 Also, as you will note, we have copies of the
5 board's opinions from July 10, 1997, as well as the
6 testimony of Darwin Burkhart, a U.S. EPA letter, as
7 well as the text of the rule proposed today.

8 On July 7, 1997, the Illinois Environmental
9 Protection Agency filed this proposal for a
10 rulemaking to amend 35 Illinois Administrative Code
11 241, also known as the Clean Fuel Fleet Program.
12 The board adopted the Clean Fuel Fleet Program on
13 September 7, 1995.

14 This proposal was published in the Illinois
15 Register on July 24, 1997, at 21 Illinois Register
16 9639.

17 Section 182(c)(4)(A) and Section 246 of the
18 Clean Air Act require that all serious, severe, and
19 extreme ozone nonattainment areas adopt a Clean Fuel
20 Fleet Program.

21 The proposal filed by the agency and proposed
22 by the board on July 10, 1997 amend certain sections
23 of the Clean Fuel Fleet Program to reflect that
24 owners and operators will have an additional year to

1 meet the requirements of the program and to correct
2 certain amounts of credit given for overcompliance.

3 This proposal was filed pursuant to Section
4 28.5 of the Environmental Protection Act entitled
5 Clean Air Act Rules Fast Track Procedures.

6 Pursuant to the provisions of that section,
7 the board is required to proceed with the set time
8 frames for the adoption of this regulation.

9 As stated in the board's July 10, 1997 order,
10 the board has no discretion to adjust these time
11 frames under any circumstances.

12 Pursuant to this section, this hearing will
13 be continued on the record day-to-day if necessary.

14 Also, pursuant to this section, the board
15 scheduled three hearings as announced in the hearing
16 officer order dated July 16, 1997.

17 Today's hearing is confined to testimony by
18 and of the agency witnesses concerning the scope,
19 applicability, and basis of the rule.

20 Within seven days after this hearing, any
21 person may request that the second hearing be held.
22 If after those seven days, the agency and affected
23 entities are in agreement upon a portion of the
24 rule, the U.S. EPA has not informed the board of any

1 unresolved adductions and no other interested parties
2 contests the rule or asks for an opportunity to
3 present additional evidence, the board may cancel
4 the additional two hearings.

5 All parties to the notice list will be advised
6 of the cancellation of the following two hearings by
7 way of the hearing officer order.

8 The second hearing is currently scheduled for
9 Wednesday, September 24, 1997, at 10:00 a.m. at this
10 same location and will be devoted to presentation of
11 testimony and documents and comments by affected
12 entities and all other interested parties if
13 requested by those parties.

14 The third hearing, currently scheduled for
15 Friday, October 10, 1997, at 10:00 a.m. at this
16 same location will be devoted solely to any agency
17 response to the materials submitted at that second
18 hearing if it is requested by the agency.

19 The board will proceed to the second notice
20 regarding this proposal on or before November 14,
21 1997, if the third hearing is cancelled and on or
22 before December 4, 1997, if the third hearing was
23 held.

24 The board will proceed to final adoption of

1 this rule 21 days after the receipt of the joint
2 committee on administrative rules certification of
3 no objection.

4 This hearing will be governed by the board's
5 procedural rules for regulatory proceedings. All
6 information which is relevant and not repetitious or
7 privileged will be admitted. All witnesses will be
8 sworn and subject to cross-questioning.

9 As previously stated, the purpose of today's
10 hearing is to allow the agency to present testimony
11 in support of this proposal and to allow any
12 questioning of the agency.

13 The agency will present any testimony it may
14 have regarding its proposal. Subsequently, we will
15 allow for questioning of the agency regarding its
16 testimony.

17 If you have any questions, I would prefer that
18 you raise your hand and wait for me to acknowledge
19 you and state your name and organization that you
20 represent, if any, before asking any question of the
21 agency witnesses.

22 Are there any other questions regarding the
23 procedure we will be following this morning?

24 Okay. See none, at this time I would ask if

1 Board Member Yi has any additional comments he would
2 like to add?

3 BOARD MEMBER YI: Perhaps at the conclusion of
4 the hearing, I may have a word or two.

5 THE HEARING OFFICER: Okay. Great. Thank you
6 very much, Board Member Yi.

7 BOARD MEMBER YI: Thank you.

8 THE HEARING OFFICER: At this time, I would
9 like to ask the agency if it would like to make an
10 opening statement. We will then turn to the agency's
11 presentation of its testimony.

12 MS. DOCTORS: Yes. I have a brief statement.

13 O P E N I N G S T A T E M E N T

14 by Ms. Rachael Doctors

15 Good morning. My name is Rachael Doctors and
16 I am representing the Illinois EPA in this matter.
17 I'm going to give a brief overview and background
18 of the proposed amendments to the Clean Fuel Fleet
19 Program that are lodged at 35 Illinois Administrative
20 Code Part 241.

21 The Clean Air Act as amended in 1990 required
22 that areas designated as serious and above for
23 nonattainment with the ozone national ambient air
24 quality standards adopt a program implementing the

1 Clean Fuel Fleet Program.

2 The Chicago area as designated as a severe
3 ozone nonattainment area and, hence, required to
4 have a Clean Fuel Fleet Program.

5 The Clean Fuel Fleet Program requires that
6 owners and operators of certain fleets with ten or
7 more vehicles acquire a percentage of new
8 achromitions clean fuel vehicles beginning in model
9 year 1998, that is, September 1, 1997.

10 Illinois proposed and the Illinois Pollution
11 Control Board adopted the rules implementing the
12 Clean Fuel Fleet Program in 1995.

13 On March 19, 1996, U.S. EPA approved the rules
14 as part of Illinois' state implementation plan for
15 the Chicago ozone nonattainment area.

16 At the end of 1996, however, there were only
17 three types of vehicles certified by the U.S. EPA
18 as clean fuel vehicles and available in Illinois. In
19 contrast, there are 4,000 potentially affected fleets
20 in the Chicago ozone nonattainment area.

21 In the last year, we have also -- the
22 Illinois EPA, has received many calls from these
23 affected fleets indicating that compliance with
24 the acquisition requirements would be nearly

1 impossible for model year 1998. We had some
2 discussions with U.S. EPA concerning these issues.

3 On May 22, 1997, Margo Oga of the U.S. EPA
4 published a memorandum stating that too few vehicles
5 and types and numbers were available for successful
6 implementation of the Clean Fuel Fleet Program and
7 that they were proposing to allow states to delay the
8 implementation of the acquisition requirements by
9 one year until model year 1999. That is September 1,
10 1998. I want to get my dates correct. There is a
11 copy of that memorandum at the end of the table for
12 anybody who would like it.

13 The agency is proposing that the sections
14 pertaining to the control requirements, credits, and
15 record keeping and reporting requirements be amended
16 to include this delay specifically at 35 Illinois
17 Administrative Code Section 241.113(a)(1), which
18 contains the phase in requirements for light-duty
19 vehicles and light-duty trucks.

20 Those dates in this section have all been
21 delayed one year where it said model year 1998, 1999,
22 2000, it now says 1999, 2000 and 2001.

23 In Subsection (a)(2), the requirements for
24 heavy-duty vehicles, which did not have a phase in,

1 but are straight 50 percent, but began in model year
2 1998, that has been changed. The proposal is to
3 change it to model year 1999.

4 Section 241.130(b)(4) in the corresponding
5 credit tables allow fleet owners to earn credits by
6 acquiring vehicles prior to the start of the program,
7 which had been model year 1998, has been delayed to
8 model year 1999.

9 So anybody who has acquired clean fuel
10 vehicles early in anticipation of the program
11 starting can get credits -- can earn some credits
12 for later compliance.

13 Similarly, in Section 241.141, the annual --
14 there is a requirement that affected fleets filing an
15 annual report to delay -- an annual report to state
16 how they have complied. It was originally due
17 November 1, 1998, and it's been delayed to November
18 1, 1999 to submit that first report.

19 That concludes the agency's statement.

20 THE HEARING OFFICER: All right. Thank you,
21 Ms. Doctors.

22 Is there anyone else on behalf of the agency
23 that will be testifying this morning?

24 MS. DOCTORS: Yes, Darwin Burkhart.

1 THE HEARING OFFICER: Okay. Great. Would
2 you please swear in the witness?

3 (Witness sworn.)

4 WHEREUPON:

5 D A R W I N J. B U R K H A R T ,

6 called as a witness herein, having been first duly
sworn,

7 deposeth and saith as follows:

8 Good Morning. My name is Darwin Burkhardt.

9 I am an Environmental Protection Specialist in the
10 Air Quality Planning Section of the Illinois EPA.

11 I have a Bachelors degree from Purdue
12 University in Physical Science and a Masters degree
13 in Environmental Planning from the University of
14 Illinois at Springfield.

15 I have been with the Illinois EPA for six
16 years and am the lead technical person for programs
17 involving clean, alternate fuels, and motor vehicles
18 including the Clean Fuel Fleet Program.

19 The Clean Fuel Fleet Program requires fleet
20 operators of ten or more vehicles in the Chicago
21 ozone nonattainment area to phase in clean fuel
22 vehicles based on a percentage of newly acquired
23 vehicles for the fleet in a given model year.

24 The phase in percentages for light-duty

1 vehicles up to 8,500 pounds of gross vehicle weight
2 is currently 30 percent in model year 1988, 50
3 percent in model year 1999, and 70 percent in model
4 year 2000 and after.

5 For heavy-duty vehicles up to 26,000 pounds
6 gross vehicle weight, the phase in is currently 50
7 percent for all model years beginning in model year
8 1998.

9 The Illinois EPA is proposing today to delay
10 the implementation of the Clean Fuel Fleet Program by
11 one year due to the insufficient supply of vehicles
12 certified to any one of the four federal low emission
13 standards, which consists of the low emission
14 vehicle, inherently low emission vehicle, ultra low
15 emission vehicle, and zero emission vehicle
16 standards.

17 With less than six types of certified
18 light-duty vehicles and only a few types of certified
19 heavy-duty engines available for the program at the
20 current time, U.S.EPA has informed the states that it
21 will allow for a one year delay in program
22 implementation.

23 Therefore, the phase in requirements will not
24 begin until model year 1999, which effectively begins

1 September 1, 1998. The phase in percentages will be
2 deferred by one year, but the phase in schedule will
3 not change

4 As of this past April, the U.S.EPA reported
5 that the only types of light-duty vehicles meeting
6 the program requirements include the Ford Crown
7 Victoria, F-Series pickups and Econoline vans, all of
8 which are dedicated natural gas vehicles certified to
9 the ultra low emission vehicle standards.

10 In addition, General Motors has a dedicated
11 natural gas-powered Sierra pickup that is certified
12 to the low emission vehicle standard and an electric
13 Chevy S-10 certified to the zero emission vehicle
14 standard.

15 Honda and General Motors also have electric
16 sedans, the Honda EV-1 and the GM EV-1 respectively,
17 that are zero emission-certified, but these vehicles
18 are only available in California at the present time.

19 As for the heavy-duty engines, U.S.EPA
20 reported that Cummins and Detroit Diesel combined
21 have five natural gas engines certified to the low
22 emission vehicle and ultra low emission vehicle
23 standards.

24 A one-year delay in the Clean Fuel Fleet

1 Program will only have a minimal environmental
2 impact. The Illinois EPA estimated that the first
3 year of the program would result in a volatile
4 organic compound reduction of 0.3 tons per day with
5 a maximum reduction of about 2.8 tons per day when
6 the program becomes fully effective in model year
7 2003.

8 With a one year delay, the peak annual
9 emission reduction will occur in model year 2004,
10 still in advance of the 2007 ozone attainment date
11 for the Chicago nonattainment area.

12 In addition to the one year delay, the U.S.EPA
13 published a notice in the January 3, 1996, Federal
14 Register correcting two credit values for the Clean
15 Fuel Fleet Program credit program. These two values
16 have been corrected in the proposed amendments.

17 This concludes my testimony.

18 THE HEARING OFFICER: Thank you. Would the
19 agency like to offer any additional testimony on
20 behalf of this proposal?

21 MS. DOCTORS: We rest.

22 THE HEARING OFFICER: Okay. Great. We will
23 now proceed with questions for the agency witness.

24 As I previously mentioned, if you have a

1 question, please wait for me to acknowledge you and
2 state your name and any organization you represent.

3 Are there currently any questions for the
4 agency?

5 BOARD MEMBER YI: I have a question.

6 THE HEARING OFFICER: Please proceed, Mr. Yi.

7 BOARD MEMBER YI: In the Clean Fuel Fleet
8 Program guidelines issued May 20, 1997, the U.S. EPA
9 states that it is proposing a postponement of the
10 mandatory implementation date.

11 I'm just wondering if there is any further
12 action on there, whether as of today, that proposal
13 has been formalized or is it still in the proposal
14 stage or what is it?

15 MR. BURKHART: They are proposing -- I guess
16 you're probably correct with the word proposing.
17 They are going through the Federal Register process
18 as far as writing an authorization into the Federal
19 Register at the current time. When that will be
20 published in the Federal Register is not known at
21 this time.

22 MS. DOCTORS: Maybe in the next month.

23 MR. BURKHART: Maybe within the next month or
24 two.

1 MS. DOCTORS: Yes.

2 BOARD MEMBER YI: Okay.

3 MR. BURKHART: But I'm not sure exactly which
4 date.

5 BOARD MEMBER YI: The only reason I asked that
6 is because we're going through this process and if
7 they decide not to formulate this postponement, we
8 are doing all of these activities for nothing. So I
9 was wondering if there was any formal statement.

10 MR. BURKHART: No.

11 BOARD MEMBER YI: I understand what you're
12 saying and that's fine.

13 MR. BURKHART: Yes. The letter pointed out
14 their intention for a one-year delay. In meetings
15 with the U.S. EPA, they have stated on several
16 occasions that they are going to propose a one-year
17 delay or authorize it.

18 MS. DOCTORS: And the one-year delay as
19 founded in Section 246 of the Clean Air Act, which
20 required that before the Clean Fuel Fleet Program
21 could apply to other areas, there had to be enough
22 vehicles available in California.

23 As part of that memo in May, they had made
24 a determination that there really weren't enough

1 vehicles available in California. Therefore, the
2 Clean Fuel Fleet Program couldn't go forward.

3 So besides them doing a Federal Register
4 delaying it one year, there is also some basis for
5 the state going forward on its own by pointing out
6 that there aren't enough vehicles.

7 BOARD MEMBER YI: Thank you very much.

8 THE HEARING OFFICER: Okay.

9 BOARD MEMBER YI: I did have one other final
10 comment.

11 THE HEARING OFFICER: Okay.

12 BOARD MEMBER YI: I want to commend the U.S.
13 EPA and the Illinois EPA for formalizing this delay
14 of one year.

15 The reason I say that is because I have been
16 part of other federal programs where although it was
17 impossible to meet the requirements of those federal
18 programs, they didn't take this kind of action where
19 you formally delay.

20 So what was happening was the people in the
21 regulating community in this other program, they have
22 a program which was impossible to implement and yet
23 the federal government and the states have not
24 formalized their delay so that they are hanging on

1 this hook and I want to compliment both the U.S. EPA
2 and the IEPA for formalizing this process to make it
3 possible for the people to not have nightmares all
4 the time.

5 Thank you very much.

6 THE HEARING OFFICER: I have one follow-up
7 logistical question regarding the location of the
8 amendments in the proposal.

9 The amendment to change the acquiring of
10 clean fuel vehicles before September 1st of 1997, the
11 amendment to change it to September 1st of 1998, with
12 regard to the credit program, that is located at 35
13 Illinois Administrative Code 241.130(b)(4), is that
14 correct?

15 MS. DOCTORS: Yes, it is.

16 THE HEARING OFFICER: Okay. And then just one
17 other thing, with regard to the record keeping and
18 reporting requirements, the amendment there to change
19 the date from November 1, 1998, to November 1, 1999,
20 is located at 35 Illinois Administrative Code
21 241.140, is that correct?

22 MS. DOCTORS: That is correct.

23 THE HEARING OFFICER: Okay. I just wanted to
24 clarify that for the record.

1 Are there any other questions of the agency
2 witness today?

3 We'll go off the record for just one minute.

4 (Whereupon, after a short
5 break was had, the
6 following proceedings
7 were held accordingly.)

8 THE HEARING OFFICER: Are there any other
9 questions for the agency's witness?

10 I have one follow-up question. Since
11 the proposal provides that the start of the program
12 date is delayed one year, does that affect the close
13 of the program date when all of the vehicles need to
14 be in compliance or do they all need to be done by
15 the September 1st or November 1st, 1999 deadlines?

16 MR. BURKHART: Well, the vehicle acquisition
17 requirements affect the beginning of the model year,
18 which should be September, and then for all the
19 purchases from that time until the end of August of
20 the following calendar year.

21 THE HEARING OFFICER: Okay.

22 MR. BURKHART: So that defines the model year.
23 There is no closing -- I mean, each model year is
24 held separately and the purchase percentages apply to

1 the vehicles acquired during each model year, but the
2 program is indefinite.

3 THE HEARING OFFICER: Okay. So it is ongoing
4 until all of the models are in compliance?

5 MR. BURKHART: Well, it only affects -- the
6 program only affects the new acquisitions.

7 THE HEARING OFFICER: Right.

8 MR. BURKHART: And eventually, it will reach a
9 point where 70 percent is the highest percentage for
10 light-duty and 50 percent is the highest percentage
11 for heavy-duty.

12 You know, I'm not sure if that's going to
13 result in an entire fleet of vehicles being LEV
14 certified. I guess if you have a situation where
15 someone is going for credits, that's possible.
16 It's indefinite.

17 THE HEARING OFFICER: Okay. That makes sense.

18 I would like to remind you again that the
19 second hearing for this rulemaking is scheduled for
20 September 24, 1997, in Chicago, at 10:00 a.m. at this
21 same location. The third hearing is scheduled for
22 October 10, 1997, at this same location and at the
23 same time.

24 I remind you, however, that if after seven

1 days of this hearing there is no request for
2 additional hearings, they board may cancel both the
3 second and third hearing.

4 In that event, all parties to the notices will
5 receive a hearing officer order indicating that the
6 cancellation of the hearings will be done.

7 If the board cancels the next two hearings,
8 the record in this matter will close 14 days after
9 the availability of the transcript.

10 Consequently, we anticipate that the public
11 comment period after this hearing will close on
12 Monday, September 15, 1997.

13 Therefore, all public comments must be
14 received at the board's Chicago office or Springfield
15 office on or before September 18, 1997, at 4:30 p.m.

16 The mailbox rule as set forth in 35 Illinois
17 Administrative Code 101.102(d) will not apply to
18 these filings.

19 Are there any other matters which need to be
20 addressed at this time?

21 Board Member Yi, do you have any follow-up
22 comments?

23 BOARD MEMBER YI: No. That's it. Thank you.

24 THE HEARING OFFICER: Okay. Seeing that there

1 are no further matters to be addressed, this hearing
2 is hereby adjourned.

3 Thank you for your attendance and
4 participation at this hearing.

5 (Whereupon, the proceedings
6 in the above-entitled
7 matter were adjourned.)

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1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF C O O K)

3 I, LORI ANN ASAUSKAS, CSR, RPR, notary
 4 public within and for the County of Cook and State
 5 of Illinois, do hereby certify that the testimony
 6 then given by all participants of the rulemaking
 7 hearing was by me reduced to writing by means of
 8 machine shorthand and afterwards transcribed upon
 9 a computer, and the foregoing is a true and correct
 10 transcript.

11 I further certify that I am not counsel
 12 for nor in any way related to any of the parties to
 13 this procedure, nor am I in any way interested in the
 14 outcome thereof.

15 In testimony whereof I have hereunto set
 16 my hand and affixed my notarial seal this 31st day of
 17 August, A.D., 1997.

18 _____
 19 Lori Ann Asauskas, CSR, RPR
 20 Notary Public, Cook County, IL
 Illinois License No. 084-002890

21 SUBSCRIBED AND SWORN
 22 before me this _____
 day of August, 1997.

23

24 _____
 Notary Public