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MAR 16 2006

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

March 16, 2006

IN THE MATTER OF: )  
)  
PROPOSED NEW 35 ILL. ADM. CODE 225 ) R06-25  
CONTROL OF EMISSIONS FROM LARGE ) (Rulemaking - Air)  
COMBUSTION SOURCES (MERCURY) )

**NOTICE OF HEARINGS**

DATES, TIMES, AND PLACES:

FIRST HEARING MAY 8, 2006,  
TO BE CONTINUED DAY TO DAY UNTIL BUSINESS IS COMPLETE

1:00 p.m.  
Assembly Hall, Concourse Level  
James R. Thompson Center  
100 W. Randolph  
Chicago, IL

SECOND HEARING, IF NECESSARY, JUNE 5, 2006,  
TO BE CONTINUED DAY TO DAY UNTIL BUSINESS IS COMPLETE

1:00 p.m.  
Illinois Environmental Protection Agency Office Building  
Training Room, 1214 West  
1021 N. Grand Avenue East, North Entrance  
Springfield, IL

THIRD HEARING, IF NECESSARY, JUNE 19, 2006,  
TO BE CONTINUED DAY TO DAY UNTIL BUSINESS IS COMPLETE

10:00 a.m.  
Illinois Environmental Protection Agency Office Building  
Training Room, 1214 West  
1021 N. Grand Avenue East, North Entrance  
Springfield, IL

PURPOSE OF HEARINGS:	Merit and Economic
ATTENDING BOARD MEMBERS:	G. Tanner Girard Andrea S. Moore
HEARING OFFICER:	Marie E. Tipsord

### **HEARING OFFICER ORDER**

#### **Conduct of Hearing**

This proposal was filed pursuant to Section 28.5 of the Environmental Protection Act (Act) (415 ILCS 5/28.5 (2004)). Pursuant to the provisions of that section, the Board is required to proceed, within set timeframes, toward the adoption of this regulation. The timeframes have been set forth in the Board's opinion and order issued today. Section 28.5 also sets specific purposes for each hearing as well as other procedural requirements.

The following are the salient requirements under Section 28.5 of the Act (415 ILCS 5/28.5 (2004)):

The first hearing shall be confined to testimony by and questions of the Agency's witnesses.

The second and third hearings may be cancelled without notice if the affected entities are in agreement on the rule and the United States Environmental Protection Agency has not informed the Board of any unresolved objection to the rule.

Within 7 days after the first hearing, any person may request that the second hearing be held.

The second hearing, if necessary, shall be devoted to presentation of testimony, documents and comments by affected entities and all other interested parties.

The third hearing, if necessary, shall be devoted to any Agency response to material presented at the second hearing and to any response by other parties. If the Agency indicates to the Board that it does not intend to introduce additional materials, the third hearing will be cancelled.

Written submission of testimony at least 10 days prior to a hearing and the simultaneous service of testimony to all persons who are listed on the service list at least 15 days prior to hearing is required.

The record closes 14 days after the availability of the transcript from the last hearing.

The Board has no discretion to adjust the stringent timeframes set forth in Section 28.5 of the Act (415 ILCS 5/28.5 (2004)). Therefore, the first hearing will go forward on May 8, 2006, and is not subject to cancellation or continuation. The second and third hearings will also go forward on the set dates if the hearings are necessary. At the second hearing, participants may comment on the Department of Commerce and Economic Opportunity's economic impact determination made pursuant to Section 27(b) of the Act (415 ILCS 5/27(b) (2004)).

### **Notice and Service List**

Pursuant to 35 Ill. Adm. Code 102.422, a notice and service list will be established. Persons on the notice list will receive notice of all *Board actions and hearing officer orders*. 35 Ill. Adm. Code 102.422(a). In comparison, Section 102.422(b) states in part:

The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. \*\*\* For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list. 35 Ill. Adm. Code 422(b).

Persons on the service list will receive notice of Board actions and hearing officer orders, as well as testimony and filings in the proceeding. The service list is reserved for persons who will be testifying and participating in the rulemaking. With the development of the Board's website ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)), COOL system and electronic filing, all prefiled testimony, public comments, and other filings will be available for viewing and downloading expeditiously. The only exception will be voluminous filings, which will be available on request. Furthermore, with the development of COOL, persons not on the service list, who wish to file a public comment and only a public comment, need not serve their comments on the service list in this proceeding.

To be placed on either the "Notice List" or the "Service List" contact the hearing officer at the address or phone number below. You may also sign up using the COOL system for "e notify" as well as for the notice list. "E Notify" is a system whereby an email is automatically sent when a filing is docketed in the COOL system. This system will notify participants of filings almost immediately and the documents will be available for viewing, downloading, or printing.

### **Prefiling of Testimony**

Section 28.5 of the Act also sets forth strict prefiling deadlines for testimony. Section 28.5 of the Act states:

The Board shall require the written submission of all testimony at least 10 days before a hearing, with simultaneous service to all participants of record in the

proceeding as of 15 days prior to the hearing, unless a waiver is granted by the Board for good cause. 415 ILCS 5/28.5(g) (2004).

Therefore, prefiled testimony for the first hearing must be served upon all persons on the service list as of 4:30 p.m., April 23, 2006.<sup>1</sup> Persons may receive a copy of the service list by contacting the hearing officer after 8:30 a.m. on April 24, 2006. All testimony must be submitted no later than April 28, 2006.

Prefiled testimony for the second hearing must be served upon all persons on the service list as of 4:30 p.m., May 21, 2006. Persons may receive a copy of the service list by contacting the hearing officer after 8:30 a.m., May 22, 2006. All testimony must be submitted no later than May 26, 2006.

Prefiled testimony for the third hearing must be served upon all person on the service list as or 4:30 p.m., June 4, 2006. Persons may receive a copy of the service list by contacting the hearing officer after 8:30 a.m. June 5, 2006. All testimony must be submitted no later than June 9, 2006.

For purposes of service of prefiled testimony on the Board, the mailbox rule of 35 Ill. Adm. Code 101.300(c) does not apply.

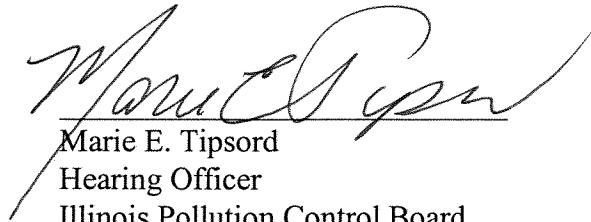
#### **Motions to Reject Regulatory Filing**

On March 15, 2006, the Board received three motions to reject the regulatory filing by the Agency. The motions were not ripe for consideration at the Board's meeting on March 16, 2006, because the response period had not elapsed (*see* 35 Ill. Adm. Code 101.500(d)). On March 16, 2006, the Board accepted the proposal and adopted the rule for first notice. Therefore, until such time as the Board rules on the pending motions, we will proceed under the requirements of Section 28.5 of the Act (415 ILCS 5/28.5 (2004)). To ensure that this process moves expeditiously, I am directing that any response to the motions be filed by March 29, 2006, and the mailbox rule of 35 Ill. Adm. Code 101.300(c) does not apply. Further, the movants may reply to the responses by April 5, 2006, and the mailbox rule of 35 Ill. Adm. Code 101.300(c) does not apply.

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<sup>1</sup> The 15th day before the scheduled hearings falls on Sunday for each of the three scheduled hearings. For purposes of prefiling, the service list will close at 4:30 on those days even though the Board is not open for business. Any emails or faxes asking for placement on the service list, received before 4:30 on that day will be included on the service list available from the hearing officer the next morning.

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read "Marie E. Tipsord", is written over a horizontal line.

Marie E. Tipsord  
Hearing Officer  
Illinois Pollution Control Board  
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Chicago, Illinois 60601  
(312) 814-4925  
[tipsorm@ipcb.state.il.us](mailto:tipsorm@ipcb.state.il.us)