

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2009

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
REASONABLY AVAILABLE CONTROL) R10-10
TECHNOLOGY (RACT) FOR VOLATILE) (Rulemaking - Air)
ORGANIC MATERIAL EMISSION FROM)
GROUP III CONSUMER & COMMERCIAL)
PRODUCTS: PROPOSED AMENDMENTS TO)
35 ILL. ADM. CODE 218 AND 219)

ORIGINAL

NOTICE OF HEARINGS

DATES, TIMES, AND LOCATIONS

FIRST HEARING:

WEDNESDAY, DECEMBER 9, 2009, TO BE
CONTINUED DAY-TO-DAY UNTIL BUSINESS
IS COMPLETE

10:00 AM
James R. Thompson Center
100 W. Randolph St.
Pollution Control Board Conference Room 11-512
Chicago, Illinois

SECOND HEARING (IF NECESSARY):

WEDNESDAY, JANUARY 6, 2010, TO BE
CONTINUED DAY-TO-DAY UNTIL BUSINESS
IS COMPLETE

10:00 AM
Michael A. Bilandic Building
160 N. LaSalle Street
Room N-505
Chicago, Illinois

THIRD HEARING (IF NECESSARY):

WEDNESDAY, JANUARY 20, 2010, TO BE
CONTINUED DAY-TO-DAY UNTIL BUSINESS
IS COMPLETE

10:00 AM
Michael A. Bilandic Building
160 N. LaSalle Street
Room N-505

Chicago, Illinois

PURPOSE OF HEARINGS: Merit and Economic
 ATTENDING BOARD MEMBER: Andrea S. Moore
 HEARING OFFICER: Timothy J. Fox

HEARING OFFICER ORDER

Statutory Requirements

The Illinois Environmental Protection Agency (Agency) filed this rulemaking proposal pursuant to authorities including the newly re-enacted Section 28.5 of the Environmental Protection Act (Act). *See* Public Act 96-0308, eff. Aug. 11, 2009 (P.A. 96-0308) (reenacting repealed Section 28.5). That provision requires the Board to proceed toward adoption of the proposed regulation by meeting a series of strict deadlines. The Board has applied those deadlines to this proceeding in its opinion and order of November 5, 2009, and in this notice of hearing and order.

Section 28.5 specifies the timing and purpose for each hearing and establishes other procedural requirements. Section 28.5(f)(1) provides that “[t]he first hearing shall be held within 55 days of receipt of the rule and shall be confined to testimony by and questions of the Agency’s witnesses concerning the scope, applicability, and basis of the rule. Within 7 days after the first hearing, any person may request that the second hearing be held.” P.A. 96-0308.

Section 28.5(f)(1)(A) provides in pertinent part that “[i]f, after the first hearing, the Agency and affected entities are in agreement on the rule, the United States Environmental Protection Agency has not informed the Board of any unresolved objection to the rule, and no other interested party contests the rule or asks for the opportunity to present additional evidence, the Board may cancel the additional hearings.” P.A. 96-0308. Section 28.5(f)(1)(B) provides in pertinent part that

[i]f, after the first hearing, the Agency and affected entities are in agreement upon a portion of the rule, the United States Environmental Protection Agency has not informed the Board of any unresolved objection to that agreed portion of the rule, and no other interested party contests the agreed portion of the rule or asks for the opportunity to present additional evidence, the Board must proceed to the second hearing, . . . but the hearing shall be limited in scope to the unresolved portion of the proposal. *Id.*

Section 28.5(f)(2) provides that, if it is necessary, “[t]he second hearing shall be scheduled to commence within 30 days of the first day of the first hearing and shall be devoted to presentation of testimony, documents, and comments by affected entities and all other interested parties.” P.A. 96-0308. Section 28.5(f)(3) provides that, if it is necessary,

[t]he third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties. The third hearing shall be cancelled if the Agency indicates to the Board that it does not intend to introduce any additional material. *Id.*

Section 28.5(f) provides that “[t]he Board must 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 hearing, unless a waiver is granted by the Board for good cause.” P.A. 96-0308.

Section 28.5(k) provides that, “[f]ollowing the hearings, the Board must close the record 14 days after the availability of the transcript.” P.A. 96-0308.

Section 28.5(n) provides that

[t]he Board must complete a fast-track rulemaking by adopting a second notice order no later than 130 days after receipt of the proposal if no third hearing is held and no later than 150 days if the third hearing is held. If the order includes a rule, the Illinois [Pollution Control] Board must file the rule for second notice under the Illinois Administrative Procedure Act within 5 days after adoption of the order. P.A. 96-0308; *see* 5 ILCS 100/5-40 (2008).

Also, Section 28.5(o) provides that, “[u]pon receipt of a statement of no objection to the rule from the Joint Committee on Administrative Rules, the Board must adopt the final order and submit the rule to the Secretary of State for publication and certification within 21 days.” P.A. 96-0308.

The Board has no discretion to adjust the strict deadlines established in Section 28.5 of the Act. *See* P.A. 96-0308. Therefore, the first hearing will begin as indicated above on Wednesday, December 9, 2009, and is not subject to continuation or cancellation by the Board. The second and third hearings, if necessary, will begin on the dates listed above in the notice of hearings. At the second hearing, participants may offer testimony or comment on the Board’s request to the Department of Commerce and Economic Opportunity for an economic impact study. *See* 415 ILCS 5/27(b) (2008).

Service and Notice Lists

The Board will establish a notice list and a service list for this proceeding. All persons on the notice list will receive notice of all Board actions and hearing officer orders. 35 Ill. Adm. Code 102.422(a).

Under Section 102.422(b) of the Board’s procedural rules,

[t]he 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 102.422(b).

In addition to receiving notice of all Board actions and hearing officer orders, persons on the service list will receive pre-filed testimony and other filings in this proceeding. The service list is intended for persons such as those who will be testifying and participating actively in this rulemaking.

The Board notes that the Agency's proposal included a Technical Support Document (TSD), Table 11 of which lists 24 potentially affected sources. TSD at 34-35. The Board begins this rulemaking proceeding by including in the Notice List each of the 24 sources listed in Table 11 of the Agency's TSD. While the Board will mail a copy of the Board's November 5, 2009, order and this hearing officer order to each of those 24 sources, the Board will provide copies of any subsequent opinions and orders only to those who specifically indicate that they wish to remain on either the Service List or Notice List for this proceeding. Any entity wishing to remain on the Service List or Notice List must provide the information requested in the form attached to this order as Attachment A to the Board by Friday, November 20, 2009.

In order to clarify the record in this proceeding, Attachment B to this order contains the names, mailing addresses, and contact names for each of the 24 entities listed by the Agency in Table 11 of its TSD and to each of which the Board has mailed its November 5, 2009, order and this hearing officer order.

Note that, through the Clerk's Office On-Line (COOL) on the Board's Web site (www.ipcb.state.il.us), persons can request to receive electronic notification. This "e-notification" generates an e-mail message when the Board receives and docketed a filing in this proceeding. These newly-filed documents will then be available to view, download, and print free of charge. Also through COOL, pre-filed testimony, public comments, and other filings are available generally for viewing and downloading. One exception to this availability may be voluminous filings, which will nonetheless be available upon request to the Clerk's office. With the access to filings provided by COOL, persons who are not on the service list and wish to file only a public comment need not serve their comments on the service list in this proceeding.

Pre-Filing Testimony

As noted above, Section 28.5(f) provides strict deadlines for pre-filing testimony. In a "fast-track" rulemaking, "[t]he Board must 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 hearing, unless a waiver is granted by the Board for good cause." P.A. 96-0308 (emphasis added).

Service Lists

For purposes of serving pre-filed testimony, the service list for the first hearing will close on Tuesday, November 24, 2009; the service list for the second hearing will close on Tuesday, December 22, 2009; and the service list for the third hearing will close on Tuesday, January 5, 2010. Any person who submits a fax or e-mail request to be added to the service list to the hearing officer by 4:30 PM on or before those three deadlines will be added to the service list for the remaining hearing or hearings. The service list for any of the three hearings will be available after 9:30 AM on the day following each of the three deadlines.

First Hearing

For the first hearing, pre-filed testimony must be served on all persons on the service list as of 4:30 PM on Tuesday, November 24, 2009. Persons wishing to pre-file testimony for the first hearing may obtain a copy of the service list by contacting the hearing officer after 9:30 AM on Wednesday, November 25, 2009. Because of the State Thanksgiving holidays on Thursday, November 26, 2009, and Friday, November 27, 2009, all pre-filed testimony for the first hearing must be submitted no later than Wednesday, November 25, 2009. *See* P.A. 96-0308 (requiring pre-filing at least 10 days before hearing). For the purpose of serving pre-filed testimony for the first hearing on the Board, the “mailbox rule” at 35 Ill. Adm. Code 101.300(c) does not apply. The Board’s Clerk must receive this pre-filed testimony before the close of business on Wednesday, November 25, 2009. Although pre-filed testimony may be filed electronically through COOL, all electronic or approved fax filings must be received by the Clerk’s Office no later than 4:30 PM on that date.

Second Hearing

For the second hearing, pre-filed testimony must be served on all persons on the service list as of 4:30 PM on Tuesday, December 22, 2009. Persons wishing to pre-file testimony for the first hearing may obtain a copy of the service list by contacting the hearing officer after 9:30 AM on Wednesday, December 23, 2009. Because of the State Christmas holiday on Friday, December 25, 2009, all pre-filed testimony for the second hearing must be submitted no later than Thursday, December 24, 2009. *See* P.A. 96-0308 (requiring pre-filing at least 10 days before hearing). For the purpose of serving pre-filed testimony for the second hearing on the Board, the “mailbox rule” at 35 Ill. Adm. Code 101.300(c) does not apply. The Board’s Clerk must receive this pre-filed testimony before the close of business on Thursday, December 24, 2009. Although pre-filed testimony may be filed electronically through COOL, all electronic or approved fax filings must be received by the Clerk’s Office no later than 4:30 PM on that date.

Third Hearing

For the third hearing, pre-filed testimony must be served on all persons on the service list as of 4:30 PM on Tuesday, January 5, 2010. Persons wishing to pre-file testimony for the first hearing may obtain a copy of the service list by contacting the hearing officer after 9:30 AM on Wednesday, January 6, 2010. All pre-filed testimony for the third hearing must be submitted no later than Friday, January 8, 2010. *See* P.A. 96-0308 (requiring pre-filing at least 10 days before

hearing). For the purpose of serving pre-filed testimony for the third hearing on the Board, the "mailbox rule" at 35 Ill. Adm. Code 101.300(c) does not apply. The Board's Clerk must receive this pre-filed before the close of business on Friday, January 8, 2010. Although pre-filed testimony may be filed electronically through COOL, all electronic or approved fax filings must be received by the Clerk's Office no later than 4:30 PM on that date.

IT IS SO ORDERED.



Timothy J. Fox
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-6085
(312) 814-3669 (fax)
foxt@ipcb.state.il.us

ATTACHMENT A

To Hearing Officer Order of November 5, 2009

Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group III Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 218 and 219 (R10-10)

I wish to added to the (please check one)

_____ Service List

_____ Notice List

in the Illinois Pollution Control Board rulemaking proceeding listed above:

Name

Organization or Company

Address

City, State, Zip

PLEASE SUPPLY THIS INFORMATION BY FRIDAY, NOVEMBER 20, 2009 TO:

Lynn Patras

E-mail:
patrasl@ipcb.state.il.us

Fax:
312-814-3669

Mail:
100 W. Randolph St., Suite 11-500
James R. Thompson Center
Chicago, Illinois 60601

ATTACHMENT B

To Hearing Officer Order of November 5, 2009

Reasonably Available Control Technology (RACT) for Volatile Organic Material Emissions from Group III Consumer & Commercial Products: Proposed Amendments to 35 Ill. Adm. Code 218 and 219 (R10-10)Potentially Affected Sources in Illinois Non-Attainment Areas for Consumer and Commercial Products, Group III

Company Name	Street Address	City	Zip Code	Company Contact
Replogle Globes Inc	2801 S 25th Ave	Broadview	60153	Edward Dieschbourg
Mecalux USA Inc	1600 N 25th Ave	Melrose Park	60160	Ada Whitaker
Edsal Mfg Co Inc	4400 S Packers Ave	Chicago	60609	Bruce Murray
Marvel Group Inc	3843 W 43rd St	Chicago	60632	Dane Nakashima
Nevin Laboratories Inc	5000 S Halsted St	Chicago	60609	John Denman
Clarín Div Of Greenwich Industries LP	927 N Shore Dr	Lake Bluff	60044	Greg Beckwith
Knaack Mfg Co	420 E Terra Cotta Ave	Crystal Lake	60014	Rich Geilfuss
Alcan Packaging Food & Tobacco Inc	5303 St Charles Rd	Bellwood	60104-1089	Brian Fuhrer
Lithographic Industries	2445 Gardner Rd	Broadview	60153	Louis A Ebert
Microcosm	1699 S 55th Ave	Cicero	60804	John C Justice
Tapecoat Co Inc	1520 Lyons St	Evanston	60201	Donald H Kathrein
Moore Wallace - Hillside Printing	4600 W Roosevelt Rd	Hillside	60162-2034	Unknown
Sun Process Converting Co	1660 W Kenneth Dr	Mt Prospect	60056-5515	Tim Fitzgerald
Avery Dennison	902 Feehanville Dr	Mount Prospect	60056	Lee Harris
Federal-Mogul Corp	7450 N McCormick Blvd	Skokie	60076-8103	William VanHorne
Color Communications Inc	4000 W Fillmore St	Chicago	60624-3916	Erendira Santillan
Chicago Steel Container Corp	1846 S Kilbourn Ave	Chicago	60623-2306	Anthony Pileggi

Rollprint Packaging Products Inc	320 Stewart Ave	Addison	60101- 3310	Mark E Pederson
Pres-on Tape & Gasket Corp	1020 S Westgate Dr	Addison	60101	Steven Atlas
Olon Industries Inc	411 Union St	Geneva	60134	Greg Kozuch
Printpack Inc	1400 Abbott Dr	Elgin	60123- 1823	Donna McCoy
Nuway Speaker Products Inc	945 Anita Ave	Antioch	60002	George Wise
AMPAC Flexicon LLC	165 Chicago St	Cary	60013	Jeff Uhrig
Panduit Corp	16530 163rd St	Lockport	60441	William P Tonn