



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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STATE OF ILLINOIS
Pollution Control Board

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February 24, 2010

John Theriault, Chief Clerk
Docket R10-18
Illinois Pollution Control Board
100W. Randolph Suite 11-500
Chicago, IL 60601

ORIGINAL Pct#1

Re: Proposed Amendments to Procedural Rules on Hearings in Identical in Substance Rulemakings (R10-18)

Dear Pollution Control Board:

The Illinois EPA is writing in support of the Pollution Control Board's (Board's) proposal to amend its procedural rules to allow for certain hearings to be held by video conference. The Board is proposing to allow such hearing for rules promulgated pursuant to Section 7.2 of the Act ("Identical-in-substance-rules). 415 ILCS 5.7.2 (2009). There are number of routine rulemakings that are subject to the procedures of this Section. Section 7.2 provides that that the Board is not required to have hearings on identical-in-substance rules, e.g., underground injection control rules, underground storage tank rules, and amendments to the definition of volatile organic material (VOM).

In the past the Board has held hearings on amendments to the definition of VOM because Section 110 of the Clean Air Act requires States to have reasonable notice and public hearing before submitting a revision to a State Implementation Plan (SIP) to the United States Environmental Protection Agency (USEPA). 42 U.S.C. §7410(a)(2006). To date the hearings held on these amendments have not elicited public participation in the form of either comments or testimony.

The Illinois EPA would note that it is USEPA's procedures in 40 CFR 51 that provide the requirements implementing Section 110(a) of the CAA for SIP submittals. In the past these regulations required public hearings:

- (a) Except as otherwise provided in paragraph (c) of this Section, States must conduct one or more public hearings on the following prior to adoption and submission to EPA of:..... (40 CFR 51.102(a)(2000)).

However, USEPA recently amended its regulations concerning the procedural requirements for SIP submittals. On July 16, 2007, USEPA revised the public hearing requirements in subsection (a) of Section 51.102 to require that states provide the public with an opportunity to request a public hearing:

Except as otherwise provided in paragraph (c) of this Section and within the 30 day notification period as required by paragraph (d) of this section, States must provide notice, provide the opportunity to submit written comments and allow the public the opportunity to request a public hearing. The State must hold a public hearing or provide the public the opportunity to request a public hearing.(40 CFR 51.102(a)(2007)).

States are no longer required to hold a public hearing on every SIP revision prior to adoption and submission to USEPA. The Illinois EPA believes that the Board's first notice procedures are sufficient to satisfy the federal requirements for notice, opportunity to comment and/or request a hearing.

With respect to non-Clean Air Act identical-in-substance rulemakings, the Board notes that there is the possibility that a hearing in a future rulemaking pursuant to Section 7.2 of the Act may serve the public interest. With respect to the applicability of using video conferencing for these types of identical-in-substance rulemaking, the Illinois EPA supports the Board's use of technology to allow for the more economical participation of the public and government officials.

Sincerely,



Rachel L. Doctors
Assistant Counsel
Illinois Environmental Protection Agency

cc: Marie Tipsord, Hearing Officer
Pollution Control Board