

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:)
)
FINANCIAL ASSURANCE) R2010-009
INSTRUMENTS -- RENEWAL AND)
TERMS: AMENDMENTS TO 35 ILL.) (Rulemaking – Land)
ADM. CODE 807 SUBPART F,)
810.104 AND 811 SUBPART G))
)

RECEIVED
CLERK'S OFFICE
JUN 15 2010
STATE OF ILLINOIS
Pollution Control Board
ORIGINAL

NOTICE OF FILING

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

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

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

Mitchell Cohen, General Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the ERRATA SHEET NUMBER 1 and PRE-FILED TESTIMONY OF BRIAN WHITE, copies of which are herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

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

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ERRATA SHEET NUMBER 1

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through one of its attorneys, Stephanie Flowers, and submits this ERRATA SHEET NUMBER 1 in the above referenced proceeding. In response to comments from the Illinois Pollution Control Board (“Board”) at the May 11, 2010 hearing, the Illinois EPA wishes to make the following changes to its proposal.

1. Section 811.715(a)

Based upon the comments of the Board, the Illinois EPA would like to strike the definition of “generally accepted accounting principles” in Section 811.715(a) in its entirety and replace with the revised language as shown below:

~~“Generally accepted accounting principles” means Auditing Standards—Current Text, incorporated by reference at 35 Ill. Adm. Code 810.104.~~

“Generally accepted accounting principles” means the accounting and auditing standards incorporated by reference at 35 Ill. Adm. Code 810.104(a)(2).

2. Section 807.715(a)

Based upon the comments of the Board, the Illinois EPA would like to strike the original definition of “generally accepted accounting principles” in Section 807.666(a) in its entirety and replace with the revised language as shown below:

~~“Generally accepted accounting principles” means Accounting Standards, Financial Accounting Standards Board, June, 1984, which is hereby incorporated by reference. This incorporation includes no later amendments or editions.~~

"Generally accepted accounting principles" means the accounting and auditing standards incorporated by reference at 35 Ill. Adm. Code 810.104(a)(2).

3. Section 810.104(a)(2)

Based upon the comments of the Board, the Illinois EPA wishes to add additional language to the proposed Section 810.104(a)(2) to identify the acronyms "FASB" and "AICPA" as shown below:

2) American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York NY 10036:

Financial Accounting Standards Board ("FASB") Accounting Standards – Current Text, 2008 Edition.

American Institute of Certified Public Accountants ("AICPA") Professional Standards – Statements on Auditing Standards, June 1, 2008 edition.

Auditing Standards—Current Text, August 1, 1990 Edition

4. Section 810.104(a)(4)

Based upon the comments of the Board, the Illinois EPA proposes to add additional language to Section 810.104(a)(4) to give the full title and issue date of Statement 18 and to correct the title of the Governmental Accounting Standards Board as shown below:

4) GASB. Governmental Government-Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk CT 06856-5116:

Statement 18 Accounting for Municipal Solid Waste Landfill Closure and Postclosure Care Costs, August 1993.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: Stephanie Flowers
Stephanie Flowers
Assistant Counsel
Division of Legal Counsel

DATED:
P.O. Box 19276
1021 North Grand Ave. East
Springfield, Illinois 62794-9276
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PRE-FILED TESTIMONY OF BRIAN WHITE

At a hearing held in this matter on May 11, 2010, the Illinois Pollution Control Board (“Board”) posed several questions to the Illinois Environmental Protection Agency (“Illinois EPA”) regarding its proposal. Several of these questions have been addressed by the Illinois EPA in its ERRATA SHEET NUMBER 1. The remaining questions are addressed as follows:

Question #1: During the hearing the Board noted that the Illinois EPA in its Statement of Reasons stated that consistency throughout the Board’s financial assurance programs was one of its goals with the proposed amendments and identified Parts 724, 725, 704, and 848 as containing language consistent with the proposed amendments to Parts 807 and 811. The Board then asked whether the financial assurance rules of Part 727 were consistent with the Illinois EPA’s proposal or whether Part 727 had been intentionally excluded from the identified Parts. (See May 11, 2010 hearing transcript at page 12 line 15 through page 13 line 15).

Answer: Part 727 was not intentionally excluded from the Parts identified as containing language consistent with the proposed amendments to Parts 807 and 811. Part 727 was adopted after work on the amendments to Parts 807 and 811 began and was unintentionally omitted. The financial assurance requirements of Part 727 are consistent with the proposed amendments to Parts 807 and 811.

Question #2: The Board also questioned why the letter of credit language, although taken from the federal wording at 40 CFR 144.70 and 264.151, is not identical to the wording of the letter of credit at 40 CFR 264.151 regarding the 120-day notice. (See May 11, 2010 hearing transcript at page 13 line 16 through page 15 line 22).

Answer: Upon review, the Illinois EPA does not have any objection to adding the following language to the letter of credit:


In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt of both you and [owner's or operator's name] as shown on the signed return receipts.

to parallel the language in 40 CFR 144.70 and 264.151. The Illinois EPA did not add this language to keep the letter of credit language consistent with the bonds where that language would not make sense.

Question #3: Finally, the Board inquired why the letter of credit does not set forth the Illinois EPA as one of the parties to be notified by certified mail. (See May 11, 2010 hearing transcript at page 15 line 23 through page 16 line 7).

Answer: Since the letter of credit is addressed to the Illinois EPA, the "you" in the paragraph regarding notification by certified mail refers to the Illinois EPA and is consistent with the federal wording at 40 CFR 144.70 and 264.151. However, the Illinois EPA would not object to adding the following language to the letter of credit to make this clearer:

. . . but, such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you, the Illinois Environmental Protection Agency, and [operator's name], the Operator, by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. . .

By: 
Brian S. White

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JUN 15 2010

**STATE OF ILLINOIS
Pollution Control Board**

ORIGINAL

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached ERRATA SHEET
NUMBER 1 and PRE-FILED TESTIMONY OF BRIAN WHITE upon the persons to whom
they are directed, by placing a copy of each in an envelope addressed to:

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

Daniel L. Robertson, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
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Matthew J. Dunn
Environmental Bureau Chief
Office of the Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

Mitchell Cohen, General Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

and mailing it by First Class Mail from Springfield, Illinois on June ____, 2010, with sufficient
postage affixed.

SUBSCRIBED AND SWORN TO BEFORE ME
This ____ day of June, 2010.

Notary Public