

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROCEDURAL RULE AMENDMENTS TO) **R14-21**
IMPLEMENT ELECTRONIC FILING) **(Rulemaking – Procedural)**
AND ALLOW FOR PUBLIC REMARKS)
AT BOARD MEETINGS: PROPOSED)
AMENDMENTS TO 35 ILL. ADM. CODE)
101-130)

NOTICE OF FILING

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **COMMENTS OF SCHIFF HARDIN LLP**, copies of which are herewith served upon you.

Respectfully submitted,

SCHIFF HARDIN LLP

By:



One of Its Attorneys

Amy Antonioli
Kathleen C. Bassi
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101-130)

APPEARANCE

I, Amy Antonioli, hereby file my appearance in this proceeding on behalf of Schiff
Hardin LLP.

Respectfully submitted,

SCHIFF HARDIN LLP

By:  _____

Amy Antonioli
Schiff Hardin LLP
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Suite 6600
Chicago, Illinois 60606
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Dated: August 19, 2014

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101-130)

APPEARANCE

I, Kathleen Bassi, hereby file my appearance in this proceeding on behalf of Schiff
Hardin LLP.

Respectfully submitted,

SCHIFF HARDIN LLP

By: _____ /s/ Kathleen Bassi

Kathleen Bassi
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, Illinois 60606
312-258-5500
kbassi@schiffhardin.com

Dated: August 19, 2014

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COMMENTS OF SCHIFF HARDIN LLP

SCHIFF HARDIN LLP (“Schiff”) appreciates this opportunity to submit comments on the Illinois Pollution Control Board’s (“Board”) proposed amendments to its procedural rules to provide for electronic filing and for public remarks at Board meetings. Schiff generally supports the proposal and updates to allow for electronic filing but offers a comment and suggestion regarding one provision in the proposed amendments and requests clarification regarding another provision.

Specifically, at proposed new Section 101.1060(e)(4), the Board provides that the affidavit or certificate of e-mail service must include the date and time of the email transmission. This is illustrated in 101.Appendix H, Illustration A for non-attorneys who serve the document by e-mail and 101.Appendix H, Illustration B for attorneys who serve the document by e-mail. We assume that the affidavit or certificate of service must accompany the document that is being served rather than being merely a separate filing with the Clerk. Identifying the time at which an e-mail is to be sent in a certificate or affidavit of service is practicably impossible, especially for the non-attorney who must have the affidavit of service notarized. The e-mail itself will automatically, electronically contain the date and time that it is sent or received. We suggest that

this electronic notation of the time is sufficient for the Board's purposes of determining that a party was timely served and recommend that the Board delete the requirement to include the time an e-mail is sent from the information required to be included in the affidavit or certificate of service. In the alternative, Schiff suggests that the Board clarify language in the affidavit or certificate of service to show that service was completed in a timely manner. For example, the Board could replace the following sentence of Appendix H, Illustrations A and B:

That the date and time of the e-mail transmission are _____.

with the following text:

That I completed e-mail service of the attached document by 5pm on [DATE].

Schiff also suggests that the Board amend 101.1060(d) to state that when a document is emailed after 5pm (rather than 4:30pm), it is deemed to be served the next business day. The Board's filing deadline is 4:30pm and allowing electronic service to occur by 5pm will provide one half hour to perform such service once the document is successfully filed with the Board.

At proposed new Section 101.1070, the Board allows any person to consent to email service of documents in lieu of receiving paper documents. Schiff suggests adding a new Subsection 101.1070(e) that allows the hearing officer to clarify in each proceeding whether the "Consent to Receipt of E-mail Service" means that all parties *must* serve the consenting recipient electronically or whether *either* electronic or paper service would suffice. This addition would, in turn, require the Board to modify the last sentence of Section 101.1000(e) to read: "Nothing in this Subpart requires a person to serve a document by e-mail or to accept service of a document by e-mail, *except as ordered by the hearing officer.*" The serving party's preferences could vary from proceeding to proceeding depending on various factors including size of the electronic documents, the number of persons on the service list, and resources.

Respectfully submitted,

SCHIFF HARDIN LLP

By:  _____

Amy Antonioli

Amy Antonioli
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 19th day of August, 2014, I have served the attached **COMMENTS OF SCHIFF HARDIN LLP**, by first class mail, postage affixed, upon the persons on the attached service list.



A handwritten signature in blue ink that reads "Amy Antonioli". The signature is written in a cursive style and is positioned above a solid black horizontal line.

Amy Antonioli

Amy Antonioli
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SERVICE LIST

<p>John Therriault, Clerk Mark Powell, Hearing Officer Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 therriaj@ipcb.state.il.us</p>	
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