

MAR 29 2006

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

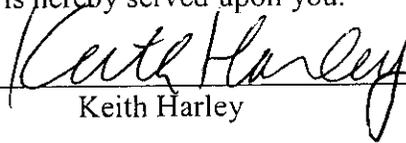
IN THE MATTER OF:)
)
PROPOSED NEW 35 ILL.ADM.CODE 255) R06-25
CONTROL OF EMISSIONS FROM LARGE) (Rulemaking – Air)
COMBUSTION SOURCES (MERCURY))

NOTICE OF FILING

To: see attached service list

PC#25

Please take notice that today I filed with the Office of the Clerk of the Pollution Control Board the Comments of the Illinois Public Interest Research Group and the Environmental Law and Policy Center In Support of Fast-Track Rulemaking, a copy of which is hereby served upon you.



Keith Harley

Dated: March 29, 2006

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IN THE MATTER OF:)
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PROPOSED NEW 35 ILL.ADM.CODE 255) R06-25
CONTROL OF EMISSIONS FROM LARGE) (Rulemaking – Air)
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COMMENTS OF THE ILLINOIS PUBLIC INTEREST RESEARCH GROUP AND
THE ENVIRONMENTAL LAW AND POLICY CENTER IN SUPPORT OF THE USE
OF FAST-TRACK RULEMAKING

I. Introduction

The Illinois Public Interest Research Group and the Environmental Law and Policy Center strongly support conducting this proceeding as a fast-track rulemaking pursuant to 415 ILCS 5/28.5 and 35 IAC 102.300 *et seq.* Fast-track rulemaking is required to meet a November 17, 2006 federal deadline for Illinois to submit a mercury reduction implementation plan to the U.S. EPA Administrator. Failure to meet this deadline could divest Illinois of its authority to develop a mercury reduction implementation plan and lead to other sanctions. Accordingly, the Illinois Pollution Control Board ("Board") has developed a schedule to meet the November 17, 2006 deadline while still providing a full and complete opportunity for public participation in developing the record on which a decision will be based. In doing so, the Board is avoiding the risk Illinois will be divested of its authority to develop a mercury reduction implementation plan, while still offering substantial opportunities for public participation. Accordingly, this is a well-considered and legally appropriate exercise of the Board's authority.

II. The Illinois Environmental Protection Agency and the Illinois Pollution Control Board Are Acting Properly In Structuring This Rulemaking As A Fast-Track Rulemaking Pursuant to 415 ILCS 5/28.5.

U.S. EPA's final Clean Air Mercury Rule ("CAMR") imposes a non-discretionary duty on Illinois to submit a mercury reduction plan to the U.S. EPA Administrator by November 17, 2006. 70 *Fed. Reg.* 28649. Although the federal rule allows Illinois to impose mercury emission reductions beyond those required by the state budget, this does not alter the November 17, 2006 deadline. *Id.* at 28632. Simply, although Illinois is given discretionary authority to require greater mercury reductions as part of its plan, it has no authority to adjust the November 17th deadline for submitting its plan to the U.S. EPA Administrator.

Failure to act by November 17th may divest Illinois of its authority to develop an implementation plan at all. *Id.* at 28632. Failure to meet the deadline allows U.S. EPA to impose its own plan on Illinois by binding, unilateral prescription. This is a sanction because it divests Illinois of a planning authority it possesses if it acts by the November 17th deadline. In addition, under 42 U.S.C. section 7509(3)(A), a state's failure to make "any" required submission can be subject to sanctions including withholding of "...all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 7405 of this title."

There are strong legal and policy reasons supporting the CAMR mandate for states to develop and submit mercury implementation plans by a deadline. Allowing states to require greater mercury reductions is consistent with the requirements of section 116 of the Clean Air Act. 42 U.S.C. section 7416. Mandating states to submit their plans by a fixed deadline ensures there will be clarity about which regulatory regime will be

effective. It will enable U.S. EPA to review and begin the process for approving state implementation plans in a coordinated manner, and will provide clarity for potential participants in a mercury trading market. Within individual states, for members of the public, regulators and especially regulated entities, it avoids the confusion that will ensue if November 17th passes and a state rulemaking is still ongoing.

Because it is acting within the mandate of an existing federal rule that includes a deadline, and because of the risk of sanctions for failure to act, the Illinois Environmental Protection Agency ("IL EPA") acted properly in submitting its proposal for fast-track rulemaking. Similarly, the Illinois Pollution Control Board acted properly and within its authority under the Illinois Environmental Protection Act when it issued an Order establishing a schedule consistent with fast-track rulemaking and with CAMR's November 17, 2006 deadline.

III. The Illinois Pollution Control Board Is Offering a Full and Complete Opportunity for Public Participation In This Fast-Track Rulemaking

As a practical matter, there is no evidence suggesting any participant in these fast-track proceedings will be denied a full and complete opportunity to participate in the creation of the record on which the final rule will be based. The Board has made provision for three public hearings that will proceed "day-to-day" as necessary to ensure a full and complete opportunity for public testimony, the submission of exhibits and the cross-questioning of witnesses. Any participant can freely submit written comments and documentary evidence that will become part of the record. The entire record of the proceedings is freely available on the Board's website. Even prior to the submission of the rulemaking proposal, IL EPA's website provided an open, comprehensive record of

the development of its proposed rule, and it conducted a number of public sessions as part of its deliberative process.

Because of the measures taken by the Board and the IL EPA, it is difficult if not impossible to imagine any threat of harm to public participation by virtue of using fast-track. The real threat of harm is if Illinois is divested of its authority to develop an implementation plan because it engages in a protracted rulemaking that is not concluded by November 17, 2006. While delay may be in the self-interest of some participants in this process, it will not enhance the development of a full and complete record. It will threaten Illinois' authority to develop an implementation plan as mandated by the federal Clean Air Mercury Rule, as proposed by the Illinois Environmental Protection Agency, and as appropriately implemented by this Board.

IV. Conclusion

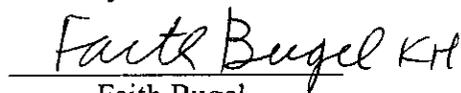
The Illinois Public Interest Research Group and the Environmental Law and Policy Center respectfully urge the Illinois Pollution Control Board to conduct this rulemaking consistently with 415 ILCS 5/28.5, and with the November 17, 2006 deadline imposed by the federal Clean Air Mercury Rule.

Respectfully Submitted,



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Faith Bugel

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CERTIFICATE OF SERVICE

I, KEITH HARLEY, an attorney, hereby certify that true copies of the foregoing Comments were delivered on March 29, 2006 to the following:

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and that true copies of the foregoing Comments were mailed by First Class Mail, by depositing the same in the U.S. Mail depository located at 227 West Monroe, Chicago, Illinois in an envelope with sufficient postage prepaid, on March 29, 2006, to the following:

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