

HEARING OFFICER:

Timothy J. Fox

### **HEARING OFFICER ORDER**

On May 9, 2008, the Board received from the Illinois Environmental Protection Agency (Agency) a proposal to amend Parts 211 and 217 of the Board's regulations by controlling nitrogen oxides (NO<sub>x</sub>) emissions from various sources. In an order dated June 5, 2008, the Board accepted the proposal for hearing and directed the hearing officer to proceed to hearing.

The Board will conduct two hearings in order to allow the proponent and any other interested participants the opportunity to present testimony on the merits and economic impact of the rulemaking proposal. At hearing, all persons who testify will be sworn in and subject to questioning. The Board will also receive any testimony on any economic impact study (EcIS) conducted by the Department of Commerce and Economic Opportunity (DCEO) on the proposed rules or on DCEO's decision not to perform an EcIS.

In setting hearing dates, the Board has considered and accommodated its general workload and the numerous days of rulemaking hearings now scheduled. As indicated above in the notice of hearings, the first hearing will begin on Tuesday, October 14, 2008, and, if business remains at the end of the hearing on that day, will continue day-to-day until business is complete or until Friday, October 17, 2008. The second hearing will begin Tuesday, December 9, 2008, and, if business remains at the end of the hearing on that day, will continue day-to-day until business is complete or until Friday, December 12, 2008.

### **Pre-Filing Deadlines**

Participants who intend to testify at hearing are urged to pre-file their testimony and to serve their pre-filed testimony on the hearing officer and all persons on the Service List. Before filing pre-filed testimony or any other document with the Clerk, please check with the hearing officer or the Board's Clerk to obtain the most recent version of the Service List.

Participants who wish to testify at the first hearing are directed to pre-file all of their testimony and any related exhibits no later than Tuesday, September 2, 2008. In order to expedite the first hearing, participants are directed to pre-file questions based on the Agency's pre-filed testimony for the Agency's witnesses no later than Tuesday, September 16, 2008. The Agency is directed to pre-file written answers to those pre-filed questions no later than Tuesday, September 30, 2008.

Although Section 27 of the Environmental Protection Act (415 ILCS 5/27 (2006)) does not limit the first hearing to the testimony of the proponent, the hearing officer presently intends to allow the Agency as proponent to present the testimony of all of its witnesses before hearing the testimony of other participants who have pre-filed testimony. Nonetheless, any person wishing to testify at the first hearing should pre-file testimony by Tuesday, September 2, 2008.

Pre-filing deadlines for the second hearing will be determined at a later date.

The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of any of this pre-filed testimony, pre-filed questions, or pre-filed answers, and the Board's Clerk must receive these documents before the close of business on the specified dates. However, documents may be filed electronically through the Clerk's Office On-Line (COOL) from the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

### **Order of Hearings**

The hearing scheduled to begin on October 14, 2008, will begin with the Agency's presentation of its case as the proponent. All pre-filed testimony will be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). For the first hearing, a brief summary of testimony will be allowed if a witness wishes to provide one before responding to questions. Witnesses will then address pre-filed questions. The hearing officer intends to allow any participant to ask follow-up questions and, after addressing pre-filed questions, to allow participants who have not pre-filed questions to ask them.

After the Agency has addressed all questions from other participants, and if time permits before the conclusion of the first hearing, other participants who have pre-filed testimony may testify. Participants who do not pre-file testimony will be allowed to testify as time permits after the conclusion of pre-filed testimony and questions based upon it. Consequently, any person wishing to testify at either of the two hearings is urged to pre-file testimony in order to ensure that they have an opportunity to testify.

The hearing scheduled to begin December 9, 2008 will begin with participants who pre-filed testimony for the first hearing and were not able to testify at that time. Participants who pre-filed testimony for the second hearing will then present that testimony.

Any participant who wishes to offer a public comment at either hearing will be allowed to do so if time permits at the close of pre-filed testimony and questions based upon it. The Board's procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b). The rules also provide that "[t]he Board will accept written comments from any person concerning the proposed regulations during the first notice period." 35 Ill. Adm. Code 102.604.

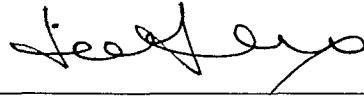
### **Service and Notice Lists**

The Service List for this rulemaking is the list of persons who wish to participate actively in this proceeding and to receive not only the Board's opinions and orders but also other filings such as pre-filed testimony and public comments. The Notice List includes participants who wish to receive only the Board's opinions and orders and hearing officer orders.

Note that interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number R08-19. This electronic notice includes notice of the filing of documents that are not typically provided to persons on the Notice List. In addition, COOL provides links to documents filed with the Board, and those documents

can be viewed, downloaded, and printed free of charge as soon as they are posted to the Board's Web site. For more information about the option of electronic notice or COOL, please consult either the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us) or John Therriault, the Board's Assistant Clerk, at (312) 814-3629.

IT IS SO ORDERED.



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