

ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD
January 30, 2009

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
AIR QUALITY STANDARDS CLEAN-UP:) R09-19
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Air)
PART 243)

HEARING OFFICER ORDER

On December 1, 2008, the Illinois Environmental Protection Agency (Agency) filed with the Board a proposal under the general rulemaking provisions of Sections 27 and 28 of the Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2006)). Generally, the Agency proposes to amend Part 243 of the Board's air pollution regulations (35 Ill. Adm. Code 243) to incorporate new federal air quality standards. In an order dated December 18, 2008, the Board accepted the proposal for hearing and directed the assigned hearing officer to proceed expeditiously to hearing in this matter.

In an order and notice of hearings dated December 23, 2008, the hearing officer scheduled two hearings: the first on Tuesday, February 3, 2009, in Edwardsville, and the second on Tuesday, March 10, 2009, in Chicago. In the same order, the hearing officer directed any participant wishing to testify at the first hearing to pre-file their testimony and any related exhibits no later than January 20, 2009.

Motion to Reschedule Hearing

On January 20, 2009, the Agency filed a motion to reschedule the February 3, 2009 hearing as well as the deadline to pre-file testimony (Mot. Reschedule). On the same date, the Agency also filed a motion to amend its original rulemaking proposal (Mot. Amend). The Agency states that it seeks to amend "to update the existing proposal to incorporate a new federal air quality standard for lead." Mot. Reschedule at 1; see Mot. Amend at 2-3. Specifically, the Agency seeks to amend Section 243.126 of the Board's air pollution regulations "to replace the existing standard for lead." Mot. Reschedule at 1; see 35 Ill. Adm. Code 243.126(a), Mot. Amend at 3. The Agency also seeks to update a citation to the Code of Federal Regulations to reflect the new lead standard. Mot. Reschedule at 1-2; see 35 Ill. Adm. Code 243.108(e), Mot. Amend at 3.

With the proposed addition of this new language, the Agency effectively requests that the Board postpone the date of the first hearing to March 10, 2009, which is now the scheduled date of the second hearing in this docket. Mot. Reschedule at 1-2. The Agency also requests that the Board set a new deadline for pre-filing testimony. *Id.*

Section 101.500(d) of the Board's procedural rules provides that,

In compliance with the Americans with Disabilities Act and other applicable federal and State laws, the hearing will be accessible to individuals with disabilities. Persons requiring auxiliary aids and services should contact John Therriault, Assistant Clerk of the Board, at 100 West Randolph St., Suite 11-500, Chicago, Illinois 60601, at telephone number 312/814-6931, fax number 312/814-3669, or TDD number 312/814-6032, five days prior to the hearing.

[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion. Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before expiration of the 14 day response period except in deadline driven proceedings where no waiver has been filed. Parties may request that the Board grant more time to respond by filing a motion for extension of time.

The Agency filed its motion to reschedule at the deadline for pre-filing testimony, which fell 14 days before the scheduled hearing date. *Id.* Under these circumstances, allowing a 14-day response period to run may require the Agency and other participants to prepare prematurely or unnecessarily for the originally-scheduled hearing date. Accordingly, allowing the 14-day response period to run would result in undue delay in addressing the Agency's motion, so the hearing officer will rule on the motion to reschedule.

The Agency's motion to reschedule is granted. The first hearing in this proceeding will take place on the date, time, and location originally scheduled for the first hearing: Tuesday, March 10, 2009, at 9:00 AM in the Board's Conference Room 11-512 of the James R. Thompson Center at 100 W. Randolph in Chicago. Among other business at the hearing on March 10, 2009, the Board intends to schedule a second hearing and set a deadline for pre-filing testimony for it.

Pre-Filing Deadlines

Participants who intend to testify at the hearing on March 10, 2009 are urged to pre-file their testimony and directed to serve any 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 Board's Clerk, please check with the Clerk to obtain the most recent version of the Service List.

Participants who wish to pre-file testimony for the March 10, 2009, hearing are directed to pre-file all of their testimony and any related exhibits no later than Tuesday, February 24, 2009. The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of any pre-filed testimony in this proceeding. The Board's Clerk must receive these documents before the close of business on the specified dates. Although 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, all electronic or approved fax filings must be received by the Clerk's Office no later than 4:30 PM on the due date. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Order of Hearings

As noted in the original notice of hearings, Section 27 of the Act (415 ILCS 5/27 (2006)) does not limit the first hearing to the testimony of the proponent, but the hearing officer intends to begin the first hearing with the Agency's presentation as the proponent. For the first hearing, a brief summary of testimony will be allowed if a witness wishes to provide one before

responding to questions. All pre-filed testimony will be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f).

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 then testify. Participants who do not pre-file testimony will be allowed to testify as time permits after the conclusion of pre-filed testimony and the questions based upon it.

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 the 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 R09-19. 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 or John Therriault, the Board's Assistant Clerk, at (312) 814-3629.

IT IS SO ORDERED.



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