

ILLINOIS POLLUTION CONTROL BOARD
October 1, 2009

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
NO_x TRADING PROGRAM:) R06-22
AMENDMENTS TO 35 ILL. ADM. CODE) (Rulemaking - Air)
PART 217)

ORIGINAL

HEARING OFFICER ORDER

On August 3, 2009, the Illinois Environmental Regulatory Group (IERG) filed two motions in this rulemaking docket, a "Motion for Emergency Rule" and a "Motion for Expedited Action on the Illinois Environmental Regulatory Group's Alternative Proposal." In an order dated August 20, 2009, the Board denied both motions and directed the Illinois Environmental Protection Agency (Agency) to file a status report on or before October 19, 2009. On September 14, 2009, IERG filed a motion requesting that the Board reconsider and clarify its order.

On September 29, 2009, the Agency filed a motion to file *instanter* and for an extension of the deadline to respond to IERG's motion for reconsideration and clarification (Mot.). The Agency first notes that its response to the motion was due September 28, 2009. Mot. at 1-2; see 35 Ill. Adm. Code 101.500(d). The Agency states that it is discussing the issues raised in the motion for reconsideration and clarification with IERG and requests a two-week extension of the deadline to file its response to the motion to October 12, 2009. Mot. at 2. The Agency further states that "[t]his Motion for Extension would have been filed on September 28, 2009, but the parties were not able to fully confer until September 29, 2009, on the contents of this Motion requesting the extension." *Id.* The Agency reports that "IERG has been informed of this Motion and does not object to the relief being requested." *Id.*

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

[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. . . ." 35 Ill. Adm. Code 101.500(d).

The Agency has requested a 14-day extension of its response deadline and indicates that the participant moving for reconsideration and clarification does not object to such an extension. Under these circumstances, undue delay would result from allowing the full 14-day response period to run. See 35 Ill. Adm. Code 101.500(d).

Having reviewed the substance of the motion and in the absence to date of any objection, the Agency's motion to file *instanter* is granted. The Agency's motion for an extension of the response deadline is also granted with one minor modification. While the Agency has requested an extension of its deadline to Monday, October 12, 2009, that day is the Columbus Day state holiday. Consequently, the Agency is directed to file its response to IERG's motion for reconsideration and clarification on or before Tuesday, October 13, 2009. See 35 Ill. Adm. Code 101.300(a). The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of this response. The Board's Clerk must receive the response before the close of business on Tuesday, October 13, 2009. Although the response may be filed electronically through the Clerk's Office On-Line (COOL) from the Board's Web site at www.ipcb.state.il.us, an electronic or approved fax filing must be received by the Clerk's Office no later than 4:30 PM on Tuesday, October 13, 2009. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

IT IS SO ORDERED.



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