

ILLINOIS POLLUTION CONTROL BOARD
JANUARY 6, 2010

REASONABLY AVAILABLE CONTROL)
TECHNOLOGY FOR VOLATILE)
ORGANIC MATERIAL EMISSIONS)
FROM GROUP 3 CONSUMER AND)
COMMERCIAL PRODUCTS PROPOSED)
AMENDMENTS TO 35 ILLINOIS)
ADMINISTRATIVE CODE 218 AND)
219)
)

R10-10

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STATE OF ILLINOIS
Pollution Control Board

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before Timothy J. Fox, Hearing Officer, taken before Rebecca A. Graziano, Certified Shorthand Reporter within and for the County of Cook and State of Illinois, at the Bilandic Building, Room N-505, Chicago, Illinois, commencing at the hour of 10:00 a.m. on the 6th day of January, A.D., 2010.

A P P E A R A N C E S

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ILLINOIS POLLUTION CONTROL BOARD
Timothy J. Fox
Andrea S. Moore
Carrie K. Zalewski
Anand Rao

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794
(217) 782-5544
BY: MS. DANA VETTERHOFFER
MR. YOGINDER MAHAJAN

ALSO PRESENT:
MR. ANDREW ARMSTRONG

1 MR. FOX: Good morning and welcome to
2 this Illinois Pollution Control Board hearing. My
3 name is Tim Fox, and I am the hearing officer for
4 this rulemaking proceeding, which is entitled,
5 quote, "Reasonably Available Control Technology, or
6 RACT, for Volatile Organic Material Emissions From
7 Group 3 Consumer and Commercial Products Proposed
8 Amendments to 35 Illinois Administrative Code 218
9 and 219," close quote. The Board docket number for
10 this rulemaking is R 10-10.

11 On October 23rd, 2009, the
12 Illinois Environmental Protection Agency filed this
13 proposal under the Fast Track rulemaking provisions
14 at Section 28.5 of the Environmental Protection Act.
15 The Board accepted this proposal for hearing on
16 November 5th, 2009.

17 I first want to note that present
18 today from the Board with me are, at my left, Board
19 Member Andrea Moore, who is the lead board member in
20 this rulemaking docket, and at my right, Board
21 Member Carrie Zalewski. Today we are holding this
22 second hearing in this rulemaking. The first took
23 place on December 9th of 2009 here in Chicago, and a
24 third hearing is now scheduled to take place on

1 January 20th, 2010, in Chicago.

2 If I may have the record reflect
3 that we have been joined by Mr. Anand Rao,
4 A-n-a-n-d, surname capital R-a-o, who is with the
5 Board's technical unit.

6 I do want to note first that on
7 December 28th, 2009, the Agency filed a motion to
8 amend its rulemaking proposal. As that motion was
9 directed to the Board, and because the 14-day
10 response deadline has not yet run, we will not
11 address the substance of that motion here today in
12 the course of the hearing, although the Board will
13 certainly do so after the end of that 14-day
14 response period.

15 This proceeding is governed by
16 Section 28.5 of the Act and the Board's procedural
17 rules. All information that is relevant and that is
18 not repetitious or privileged will be admitted into
19 the record. Please note that any questions posed
20 today by either the Board members or the staff are
21 intended solely to develop a clear and complete
22 record for the Board's ultimate decision, and do not
23 reflect any prejudgement of the proposal.

24 And I would ask for the benefit of

1 the court reporter today if you would speak as
2 clearly and loudly as possible and avoid speaking at
3 the same time as any other person. I'm sure that
4 would be helpful to her.

5 Under Section 28.5 G2 of the
6 Environmental Protection Act, this hearing, quote,
7 "Shall be devoted to presentation of testimony,
8 documents, and comments by effected entities and all
9 other interested parties," close quote. Although
10 the deadline to pre-file testimony for the second
11 hearing passed on December 24th, 2009, no person has
12 pre-filed any testimony. We would have -- or would
13 have begun this hearing with that pre-filed
14 testimony followed by questions, however, we do have
15 some other issues and business we can conduct.

16 Before I do turn to those, I want
17 to note that I placed just inside the door a sheet
18 on which persons could sign in to indicate that they
19 wish to testify. I can clearly see that no person
20 has done so. Before I turn to the issues that I
21 referred to a moment ago, it might be appropriate to
22 have, for the record, the agency simply identify who
23 here is present on its behalf.

24 MS. VETTERHOFFER: I'm Dana

1 Vetterhoffer, assistant counsel for the Illinois
2 EPA.

3 MR. MAHAJAN: Yoginder Mahajan,
4 environmental protection engineer with the Illinois
5 EPA.

6 MR. FOX: And thanks to both of you.
7 Before I turn to some of those housekeeping issues I
8 referred to, do we have any issues about procedure
9 or any other matters? Very good. Let me move on to
10 the issue of an economic impact study.

11 Since 1998, Section 27 B of the
12 Environmental Protection Act has required that the
13 Board request that the department, now known as the
14 Department of Commerce and Economic Opportunity, or
15 DCEO, conduct an economic impact study of proposed
16 rules before the Board adopts the rules. The Board
17 then must make either the economic impact study
18 itself or the department's explanation for not
19 conducting one available to the public at least
20 20 days before a public hearing, such as this one.

21 In a letter dated November 5th,
22 2009, and placed in the record of this proceeding,
23 the Board requested that DCEO conduct an economic
24 impact study of this amended rulemaking proposal.

1 Citing the deadlines imposed upon fast track
2 rulemaking under Section 28.5 of the Act, the Board
3 requested that DCEO determine whether it would
4 conduct an economic impact study and respond to the
5 Board with that determination no later than
6 December 15th, 2009. To date, the Board has
7 received nothing from DCEO responding to that
8 request.

9 Is there anyone who wishes to
10 testify regarding the requests from the Board to
11 DCEO? Neither seeing nor hearing any indication
12 that there is, I want to turn to another issue.

13 The third hearing, as required by
14 Section 28.5, has been scheduled to take place on
15 Wednesday January 20th, 2010, here in Chicago with a
16 deadline of Friday, January 8th, 2010, to pre-file
17 testimony for it. Under Section 28.5 F3, the third
18 hearing, quote, "Shall be devoted solely to any
19 Agency response to the materials submitted at the
20 second hearing and to any response by other parties.
21 The third hearing shall be canceled if the Agency
22 indicates to the Board that it does not intend to
23 introduce any additional material," close quote.

24 Ms. Vetterhoffer, does the Agency

1 wish to make any comment on the issue of a third
2 hearing?

3 MS. VETTERHOFFER: The Agency does not
4 intend to issue any materials.

5 THE COURT: Very good. Is it the
6 Agency's wish that the Board proceed to cancel the
7 third hearing under these circumstances?

8 MS. VETTERHOFFER: Yes.

9 MR. FOX: Very good. The expedited
10 transcripts of today's hearing should be available
11 to the Board no later than this Friday, January 8th,
12 2010. The Board will then post the transcript to
13 the clerk's office online, or COOL, which is
14 accessible through the Board's website, at
15 www.ipcb.state.il.us.

16 Under Section 28.5 K, quote,
17 "Following the hearings, the Board must close the
18 record 14 days after the availability of the
19 transcript," close quote. Because the Agency has
20 clarified that it intends this to be the final
21 hearing in this proceeding, and because the Board
22 expects to receive the transcript no later than
23 Friday, January 8th, the Board will keep the record
24 open for public comment until Friday, January 22nd,

1 of 2010.

2 In order to be as clear as
3 possible, I will issue a hearing officer order when
4 the Board receives the transcript so that all of the
5 participants will know A, that the Agency has
6 requested cancellation of the third hearing, and
7 also will know that the 14-day comment period begins
8 and ends on specific dates.

9 Because of the tight deadlines
10 imposed under Section 28.,5 that hearing officer
11 order will indicate that the, quote, "Mailbox Rule,"
12 close quote, at Section 101 300B 2 of the of the
13 Board's procedural rules does not apply to these
14 comments or other filings, so that they must be
15 received by the Board's clerk on or before the
16 deadline established in that order.

17 I'd also note that post hearing
18 comments can be filed electronically through COOL,
19 and any questions about the process of doing so may
20 certainly be directed to the clerk's office.
21 Filings with the Board, whether paper or electronic,
22 must also be served by the hearing officer and all
23 persons on the service list, and a current copy, a
24 correct copy, of the service list can always be

1 obtained from the hearing officer order or from the
2 Board's clerk.

3 Finally, I want to note that under
4 Section 28.5 N -- as in Nancy -- quote, "The Board
5 must complete a Fast Track rulemaking by adopting a
6 second notice order no later than 130 days after
7 receipt of the proposal if no third hearing is held,
8 close quote."

9 As, again, the Agency has
10 indicated that it desires to cancel the third
11 hearing, that second notice order is due on or
12 before March 2nd of 2010. As it turns out, the last
13 regularly scheduled Board meeting before that date
14 is scheduled to take place on Thursday,
15 February 18th, 2010, and the Board, as required by
16 the Act, will adopt an order on or before that date.

17 Does anyone have any questions
18 about those issues or any other matter? Very good.
19 Why don't we go off the record just for a moment and
20 resume in a short time.

21 (Whereupon, a discussion was had
22 off the record.)

23 MR. FOX: I do want the record to
24 reflect that we did stand, effectively, at ease for

1 approximately 15 minutes to allow any person who was
2 delayed in arriving to participate. No additional
3 person, either here in the hearing room or at the
4 Board's offices, has appeared to participate in this
5 hearing.

6 I'll certainly turn to the persons
7 present here today to see if there are any
8 additional questions or a comment that persons would
9 wish to offer. Neither seeing nor hearing any
10 indication that anyone does wish to speak to the
11 record, I will certainly thank the Agency for its
12 participation. And as noted, the Board will, as
13 required, be preparing a second notice of opinion in
14 an order.

15 And at this point, we can
16 certainly adjourn the second hearing, and I will be
17 issuing, as I mentioned, an order that does reflect
18 the Agency's order to cancel the final third hearing
19 that's now on our calendar. Thank you again for
20 your participation, and we are adjourned.

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF COOK)

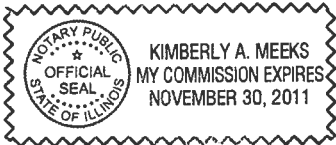
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REBECCA A. GRAZIANO, being first
duly sworn on oath, says that she is a court
reporter doing business in the City of Chicago, that
she reported in shorthand the proceedings given at
the taking of said hearing, and that the foregoing
is a true and correct transcript of her shorthand
notes so taken as aforesaid, and contains all the
proceedings given at said hearing.

Rebecca Graziano
REBECCA A. GRAZIANO, CSR
Eight West Monroe Street, Suite 2007
Chicago, Illinois 60603
License No.: 084-004659

SUBSCRIBED AND SWORN TO
before me this 8th day
of January, A.D., 2010.

Kimberly A. Meeks
Notary Public



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