

ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD

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IN THE MATTER OF:)
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FINANCIAL ASSURANCE)
INSTRUMENTS-RENEWAL AND)
TERMS: AMENDMENTS TO)
35 ILL.ADM.CODE)
807.SUBPART F, 810.104,)
and 811.SUBPART G.)

RECEIVED
CLERK'S OFFICE
MAY 17 2010
STATE OF ILLINOIS
Pollution Control Board

R10-9
(Rulemaking-Land)

RECEIVED
CLERK'S OFFICE
MAY 17 2010
STATE OF ILLINOIS
Pollution Control Board

RECORD OF PROCEEDINGS
MERIT AND ECONOMIC
May 11, 2010

Reported by Robin L. Stranimeier,
C.S.R., R.P.R.

1 A P P E A R A N C E S

2 Daniel L. Robertson/Hearing Officer
Illinois Pollution Control Board
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15 Alisa Liu, P.E./Environmental Scientist
Illinois Pollution Control Board
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18 BOARD MEMBERS:

19 Gary L. Blakenship
20 G. Tanner Girard, Ph.D.
21 Thomas Johnson
22 Andrea S. Moore
23 Carrie Zalewski

24

1 BE IT KNOWN, that a record was made on May 11, 2010, at
2 Illinois Environmental Protection Agency, 2nd Floor, Douglas
3 Conference Room, 1021 N. Grand Avenue East, Springfield,
4 Illinois, before Robin L. Stranimeier, an Illinois Notary
5 Public, Illinois CSR, and RPR. Also, it is stipulated and
6 agreed that this record may be taken in stenotype by Robin L.
7 Stranimeier and thereafter transcribed into typewriting.

8

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* * * * *

10

11 MR. ROBERTSON: I guess we're going on the
12 record now. Good afternoon all. My name is Daniel Robertson
13 and I've been appointed by the Board to serve as the hearing
14 officer in this proceeding entitled: In the matter of
15 Financial Assurance Instruments - Renewal and Terms:
16 Amendments to 35 Illinois Administrative Code 807.Subpart F,
17 810.104, and 811.Subpart G. This matter is listed as R10-9 in
18 the Board's docket.

19 With me today is the presiding Board Member Gary
20 Blankenship and we also have from the Board, Member Andrea
21 Moore and from the Board's Technical Unit we have Alisa Liu,
22 and then on this side we have, Board Attorney Marie Tipsol,
23 Acting Chairman Tanner Girard, Member Tom Johnson and Member
24 Carrie Zalewski.

1 The purpose of today's hearing is two-fold.
2 First, the rulemaking subject to 27(b) of the Environmental
3 Protection Act. Section 27(b) of the Act requires the Board
4 to request the Department of Commerce and Economic Opportunity
5 to conduct an economic impact study on certain proposed rules
6 before adoption. If the DCEO chooses to conduct the economic
7 impact study, the DCEO has 30 to 45 days after the Board's
8 request to produce the study of the economic impact of the
9 proposed rules. The Board must then make an economic impact
10 study, or DCEO's explanation for not conducting the study
11 available to public at least 20 days before a public hearing
12 on the economic impact of the proposed rules.

13 In accordance with Section 27(b) of the Act, the
14 Board sent a letter dated October 5, 2009 that the DCEO
15 conduct an economic impact study for these rule makings. To
16 date the DCEO has not responded to the Board's letter, and a
17 copy of the Board's letter is available on the table at the
18 back of the room and we will later be accepting any comments
19 concerning this letter.

20 The second purpose for today's hearing is to
21 hear prefiled testimony from the proponent, the Illinois
22 Environmental Protection Agency. This testimony was filed on
23 April 21, 2010 and has been made public on the Board's
24 website. To date no other testimony has been filed. Unless

1 there's any objection, all testimony will be taken as occurred
2 and we will begin with questions immediately.

3 If you wish to ask a question, please raise your
4 hand up and wait for me to acknowledge you. After I have
5 acknowledged you, please state your name and whom you
6 represent before you begin your questions. It is important
7 that you only speak one at a time to insure that the court
8 reporter is able to get all of your questions on the record.

9 MR. JOHNSON: There's only one of us.

10 MR. ROBERTSON: Maybe not.

11 Please also note that any question asked by a
12 Board Member is intended to help build a complete record for
13 the Board's decision and not to express any preconceived
14 notion or bias. If there is time at the end of the day, the
15 Board will also allow any person who did not prefile testimony
16 to have an opportunity to testify if they so wish to.

17 At this point would the Agency like to make any
18 opening statement before we proceed to testimony?

19 MS. FLOWERS: No.

20 MR. ROBERTSON: Would anyone else like to make
21 an opening statement?

22 (No response.)

23 MR. ROBERTSON: Seeing none, we will now proceed
24 to testimony starting with the Agency. Will the court

1 reporter please swear in the Agency witness.

2

3 (At this time BRIAN WHITE is duly sworn.)

4

5 MR. ROBERTSON: Are there objections to
6 admitting testimony of Mr. White as read?

7 (No response.)

8 MR. ROBERTSON: And, Mr. White, is this a true
9 and correct copy of your testimony?

10 MR. WHITE: Yes.

11 MR. ROBERTSON: Thank you. Do you need to hold
12 onto that?

13 MR. WHITE: No.

14 MR. ROBERTSON: Thank you. At this point I will
15 enter the prefiled testimony of Mr. White as Exhibit A to this
16 proceeding. Exhibit 1. I'm sorry.

17 (Mr. Robertson marks Exhibit No. 1.)

18 MR. ROBERTSON: Do any members of the public
19 have any questions regarding Mr. White's testimony?

20 (No response.)

21 MR. ROBERTSON: Seeing no questions, we'll now
22 proceed with Board questions. At this time I'll pass the
23 proceedings to Ms. Liu, the Board's technical unit to address
24 the questions.

1 MS. LIU: Thank you. Good afternoon, Mr. White
2 and Ms. Flowers. Thank you for your testimony and the
3 thoroughness of your proposal. We just have a few clarifying
4 type questions to help put together a stronger record.

5 MR. WHITE: Okay.

6 MS. LIU: The Agency's Statement of Reasons
7 included three comments from three different agencies on the
8 proposal and one of them was from the Illinois Banker's
9 Association, which was marked as Exhibit 2. The Banker's
10 Association had requested the Agency craft some language to
11 clarify that these revisions apply only to Irrevocable Standby
12 Letters of Credit that are issued after the affected date of
13 the amendment. In response to the Banker's Association's
14 comment, the Agency stated in its Statement of Reasons that
15 the changes suggested were not substantive.

16 I was wondering if you could please elaborate on
17 why you thought those changes wouldn't be substantive?

18 MR. WHITE: Well, as far as for the letter of
19 credits and the bonds right now if you get a bond or a letter
20 of credit and it falls under Part 811, it's for 5 years. If
21 it falls under 807, it's for 4 years. Our approach on this --
22 and then it expires and they're supposed to get a new letter
23 of credit. We can go ahead and we can have it renewed for one
24 12-month period, but after that, you know, it's done. You get

1 one 12-month period.

2 So once those are over we plan to replace those
3 with the new letters of credit and the new bonds that follow
4 the new format. If they're good right now, that 4 and 5 year
5 period, we're just going to go ahead and keep them. And if
6 they don't renew them after the 4 or 5 period we can request a
7 12-month extension, but after that we give one 12-month
8 extension then they'll have to replace it with something else
9 that's acceptable.

10 MS. LIU: So that single 12-month extension
11 would apply only to the older versions of those letters --

12 MR. WHITE: Yes.

13 MR. LIU: -- and then after it expires then the
14 new ones would be taking effect?

15 MR. WHITE: Right.

16 MS. LIU: Okay. If they renew them?

17 MR. WHITE: Yes.

18 MS. LIU: All right. Thank you.

19 In Part 807.666 under Self Insurance, the
20 proposal includes revisions to the definition of Generally
21 Accepted Accounting Principles, and the proposed definition
22 refers to the updated FASB Accounting Standards. Did you find
23 that?

24 MS. FLOWERS: Do you have a page number?

1 MS. LIU: No. I don't have a page number.

2 MR. WHITE: What did you say the citation was?

3 MS. LIU: 807.666

4 MS. ZALEWSKI: It's page 1843.

5 MS. LIU: And it's referring to FASB Accounting
6 Standards, right?

7 MS. FLOWERS: Right.

8 MS. LIU: Then in Part 811.715(a), also under
9 Self Insurance, there is a definition of Generally Accepted
10 Accounting Principles but it's different.

11 MS. FLOWERS: Was that the --

12 MS. LIU: 811.715(a)

13 MR. ROBERTSON: That's page 30 of 65.

14 MS. LIU: This definition refers to auditing
15 standards, and my question was: If you could take a look at
16 those two definitions to see if they should be more consistent
17 with each other?

18 MS. FLOWERS: Okay.

19 MS. LIU: Since the new Incorporations by
20 Reference include both the Accounting Standards and then a
21 separate Auditing Standard, I was wondering if you -- if this
22 definition was intended to include both the accounting and the
23 auditing standards?

24 MS. FLOWERS: Well --

1 MS. LIU: I don't know, but if you could take a
2 look at that, that would be good.

3 MS. FLOWERS: I'll have to look at that, but I
4 think that -- I mean you're right we need to take a look at
5 it -- but I think, whatever 810.104 is would be the correct --
6 because that's the Incorporation by Reference.

7 MS. LIU: 810.104 includes both the Auditing
8 Standards --

9 MS. FLOWERS: Oh, it does?

10 MS. LIU: Yes, FASB. -- as well as the AICPA
11 Auditing Standards --

12 MS. FLOWERS: All right.

13 MS. LIU: -- both incorporated.

14 MS. FLOWERS: So maybe it needs to say
15 accounting and auditing. We have accounting in one place and
16 auditing in the other. Okay. We'll take a look at that and,
17 yeah, maybe we need to make a change. Thank you.

18 MS. LIU: Sure. Okay.

19 Along those same lines, you refer to the FASB
20 and the AICPA, which are both acronyms that you proposed for
21 the Incorporations by Reference. I was wondering if those
22 acronyms were spelled out anywhere in the rules and, if not,
23 if should they be?

24 MR. WHITE: I think it's always a good idea to

1 spell them out so --

2 MS. FLOWERS: Where is that?

3 MR. WHITE: It's in our 810.

4 MS. FLOWERS: Oh, 810?

5 MR. WHITE: Yeah.

6 MS. FLOWERS: Yeah. Did you just notice that in
7 part 810 or maybe some other place?

8 MS. LIU: The acronym --

9 MR. WHITE: We just need to spell it out in one
10 place.

11 MS. LIU: Yeah.

12 MS. FLOWERS: Okay.

13 MR. WHITE: And we kind of do with the AICPA,
14 but not the Financial Accountant Standard.

15 MS. FLOWERS: And we can take a look at that
16 too. Thank you.

17 MS. LIU: Sure. Also, with the Incorporations
18 by Reference this wasn't one of the revisions that you had in
19 there, but there is an existing incorporation for Government
20 Accounting Standards Board Statement 18, and I believe the
21 full title of Statement 18, which is not included is, quote,
22 Accounting for Municipal Solid Waste Landfill Closures and
23 Postclosure Care Costs, and it also has a date, which is also
24 not included now, of August 1993 when it was issued.

1 And I was wondering whether or not you might
2 think it would it be appropriate to include the full title of
3 that statement as well as the date issued in the
4 Incorporations by Reference?

5 MS. FLOWERS: What is the -- what is it again?

6 MS. LIU: It's in Incorporations by Reference.
7 It's the accounting -- excuse me -- the Government Accounting
8 Standards Board and you'll see Statement 18 all by itself.

9 MS. FLOWERS: And you're saying that Statement
10 18 has a title that we might want to --

11 MS. LIU: A title and the date.

12 MS. FLOWERS: Okay.

13 MR. WHITE: We might as well make it clear.

14 MS. FLOWERS: We can look at that. Thank you.

15 MS. LIU: Sure. In the Agency Statement of
16 Reasons on page 2 to 3, you state, quote, The main purpose of
17 the amendments is to provide consistency throughout the
18 Board's financial assurance programs by adding the evergreen
19 renewal language to the bonds and the letters of credit and
20 reducing the required terms of these instruments to 1 year or
21 more. The Board's other financial assurance programs
22 regulated in Parts 724, 725, 704, and 848 incorporate the
23 evergreen renewal language and 1-year term limits and are the
24 model for the changes in 807 and 811, end quote.

1 Besides the parts that you mention in this
2 Proposal there are other financial assurance rules that appear
3 in 727, and I was wondering if the proposed rules are
4 consistent with 727.240 now or if the Agency was planning to
5 take a look at -- if you don't know now that's all right, you
6 can get back.

7 MR. WHITE: Okay.

8 MS. LIU: I guess maybe a more general question
9 would be: Has the Agency already or is the Agency planning to
10 review all of the financial assurance requirements for
11 consistency throughout, and if 727 ought to be looked at too?

12 MS. FLOWERS: We can look at that, and that's
13 because we don't have it listed. Is that what you mean?

14 MS. LIU: (Nods head.)

15 MS. FLOWERS: Thank you.

16 MS. LIU: The Agency's proposal included a
17 number of revisions to the financial assurance forms, and the
18 commonality in all the revisions was the Agency addition of
19 the wording for the -- that allows for the expiration date to
20 be automatically extended for a period of at least 1 year
21 unless someone is notified 120 days prior. And that revision
22 appears in both 807 and 811 for Illustration C, the Forfeiture
23 Bond; Illustration D, the Performance Bond; Illustration E,
24 the Irrevocable Standby Letter of Credit; and Illustration H,

1 the Operator's Bond with Parent Surety.

2 And the language that the Agency had proposed
3 was, quote, The 120 days will begin on the date when both the
4 owner and operator and the IEPA have received the notice as
5 evidenced by return receipts, end quote.

6 The form letter for the Irrevocable Standby
7 Letter of Credit is adopted from the federal wording in the
8 Hazardous Waste Rules, under 40 CFR 144.70 and 264.151, and
9 although the Agency's proposal for the letter of credit is
10 nearly identical to that federal wording, the statement about
11 the 120 days is substantively different than the federal
12 counter part.

13 The parallel sentence in the federal language
14 for the letter of credit states, quote, In the event you are
15 so notified, any unused portion of the credit shall be
16 available upon presentation of your sight draft for 120 days
17 after the date of receipt of both you and [owner's or
18 operator's name] as shown on the signed return receipts.

19 So basically the federal wording provides that
20 the unused credit should be made available, but the proposed
21 Illinois version does not include that provision. However,
22 existing rules under 848 for the Management of Used Tires and
23 Waste Tires, the language for the letter of credit there does
24 follow the federal language.

1 So I was wondering if the agency could take a
2 look at 848 along side of the federal wording and see if
3 perhaps for at least the letter of credit whether or not we
4 should be following more closely the federal language other
5 than what you proposed here?

6 MS. FLOWERS: This is our Part 811 Letter Of
7 Credit?

8 MS. LIU: 811 and 807, the Letter of Credit
9 which was Illustration E and in 848 I think it's Illustration
10 C, and the federal wording is -- would you like a citation to
11 that?

12 MS. FLOWERS: If you have it.

13 MS. LIU: Yeah. It's 40 CFR 144.70 and 264.151.

14 MS. FLOWERS: Okay. We can take a look at that.

15 MS. LIU: I know that that statement is
16 consistent. You added it to each one of the form letters, but
17 I think in the case the letters of credit you lose some of the
18 meaning from the federal parallel language when you simply use
19 that.

20 MS. FLOWERS: Okay.

21 MS. LIU: So maybe you can look at it?

22 MS. FLOWERS: Okay.

23 MS. LIU: In addition, in that letter of credit
24 there is language about who's going to be served by certified

1 mail and I think the wording for all the other revisions in
2 the forms included the owner and the operator and the Illinois
3 EPA, but for the letter of credit somehow the EPA got left off
4 of people to be notified by certified mail. And I was
5 wondering if you meant to include the Illinois EPA? It's in
6 that same paragraph.

7 MS. FLOWERS: Okay. We can look at that.

8 MS. LIU: Okay. That's it for me. Thank you.

9 MR. ROBERTSON: At this point I'd ask if anyone
10 else has any questions for Mr. White?

11 (No response.)

12 MR. ROBERTSON: Seeing no questions, would
13 anybody else wish to testify on any other matter in this
14 proceeding?

15 (No response.)

16 MR. ROBERTSON: Seeing no comments, the Board
17 would also like to address an additional matter: When the
18 Agency filed this proposal, the Board become aware of a small
19 typo in Part 811 that needs to be corrected. The typo appears
20 under Subpart C at 811.309(h)53. However, since Subpart C is
21 not currently open the Board will be adding Subpart C to the
22 docket to make the necessary revision.

23 This change will merely correct a reference to
24 811.130, that should be 811.310. Do we have any questions on

1 this change?

2 (No response.)

3 MR. ROBERTSON: Seeing no questions, before we
4 close today did anybody wish to comment on the letter
5 submitted to the DCEO or the DCEO's nonresponse?

6 (No response.)

7 MR. ROBERTSON: Seeing no comments, at this
8 point I would like to go off the record and set the dates for
9 the next part of this proceeding.

10 (Off the record.)

11 MR. ROBERTSON: I'd like to go back on the
12 record now. Thank you.

13 So the second hearing in this matter will now be
14 set for July 15th at 1:00 p.m. to take place in Chicago, and
15 prefiled testimony must be filed with the Board by June 15,
16 2010.

17 I believe that's all. I would like to thank
18 everybody for your time in attending this matter today and
19 making yourselves available. And with that this hearing is
20 now adjourned.

21 (Off the record.)

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CERTIFICATION

I, ROBIN L. STRANIMEIER, an Illinois Notary Public,
Illinois CSR, and RPR, do HEREBY CERTIFY that the foregoing
record was made before me on May 11, 2010, at the Illinois
Environmental Protection Agency, Douglas Conference Room, 1021
N. Grand Avenue East, Springfield, Illinois.

IN WITNESS WHEREOF, I have hereunto set my hand the
12th day of May, 2010.



ROBIN L. STRANIMEIER

Notary Public

CSR #084-004700

RPR #58512

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