

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
 REVISION OF ENHANCED VEHICLE )  
 INSPECTION AND MAINTENANCE (I/M) ) No. 2011-109  
 REGULATIONS, AMENDMENTS TO 35  
 ILLINOIS ADMINISTRATIVE CODE  
 PART 240.

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**FEB 14 2011**

**STATE OF ILLINOIS  
Pollution Control Board**

TRANSCRIPT FROM THE PROCEEDINGS

taken before the HEARING OFFICER TIMOTHY FOX by  
 LORI ANN ASAUSKAS, CSR, RPR, a notary public  
 within and for the County of Cook and State of  
 Illinois, at Room 11-500 of the Illinois Pollution  
 Control Board, Chicago, Illinois, on the 10th day  
 of February, 2011, A.D., at 1:00 o'clock p.m.

1       A P P E A R A N C E S:

2               ILLINOIS POLLUTION CONTROL BOARD,  
3               100 West Randolph Street  
4               Suite 11-500  
5               Chicago, Illinois 60601  
6               (312) 814-3461  
7               BY: MR. TIMOTHY FOX, HEARING OFFICER

8       BOARD MEMBERS PRESENT:

9               Ms. Carrie Zalewski  
10              Mr. Anand Rao  
11              Ms. Andrea Moore  
12              Mr. Gary Blankenship

13       ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

14  
15              Mr. Kenneth Mohr  
16              Mr. Michael S. Hills  
17              Mr. Stephen W. Thorpe

18  
19       ALSO PRESENT:

20  
21              Ms. Carol Person, USEPA  
22              Mr. Christopher Demeroukas, USEPA  
23              Mr. Francisco J. Acevedo, USEPA

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Marked      Admitted

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1 HEARING OFFICER FOX: Good afternoon,  
2 everyone, and welcome to this Illinois Pollution  
3 Control Board hearing. My name is Tim Fox and I  
4 am the hearing officer for this rulemaking. This  
5 is entitled, "In The Matter of Revision of Enhanced  
6 Vehicle Emission Inspections and Maintenance (I/M)  
7 Regulations, Amendments to 35 Illinois  
8 Administrative Code 240."

9 I first want to introduce as also  
10 being present from the Board at my immediate left  
11 is Board member Andrea Moore, the lead Board member  
12 for this proceeding. At my far right is Board  
13 member Carrie Zalewski and to my right next to her  
14 is Board member Gary Blankenship. Also present at  
15 my immediate right is Anand Rao, of the Board's  
16 technical staff.

17 The Board's docket number  
18 for this rulemaking is R11-19. The Illinois  
19 Environmental Protection Agency filed this  
20 rulemaking proposal on December 8, 2010, and in  
21 an order dated December 16, 2010, the Board  
22 accepted the Agency's proposal for hearing, granted  
23 the Agency's request for a waiver of specified  
24 copy and filing requirements and directed the

1 Board's clerk to publish this as a proposal for  
2 public comment and the proposal appeared in the  
3 Illinois Register on January 3, 2011, at 35  
4 Illinois Register 129.

5 On December 16, 2010, a hearing  
6 officer order scheduled two hearings; the first on  
7 February 2, 2011, in Chicago, and February 23rd in  
8 Edwardsville. The order also set a deadline of  
9 January 19, 2011, to pre-file testimony for the  
10 first hearing and pursuant to that order, the  
11 Agency, on January 18, 2011, pre-filed the testimony  
12 of Mr. Michael Hills. No other participant  
13 pre-filed testimony for this, the first hearing.

14 On February 2, 2011, severe  
15 winter weather caused state offices, including the  
16 Board, to close. Accordingly, the hearing officer  
17 convened the first hearing on the next business day,  
18 February 3, 2011, at 1:00 p.m., but continued it  
19 on the record to this date and time without  
20 accepting testimony or comment.

21 This proceeding, as we go forward  
22 is, of course, governed by the Board's procedural  
23 rules. All information that is relevant and is not  
24 repetitious or privileged will be admitted into the

1 record. Please note that any questions by the  
2 Board's staff or Board members are intended solely  
3 to develop a record that's clear and complete and  
4 do not reflect any prejudgment of the proposal.

5 In speaking with Mr. Mohr briefly  
6 before the hearing, it was clear that the Agency's  
7 intent was to begin the hearing with Mr. Hill's  
8 pre-filed testimony. It's my understanding that  
9 the Agency would also like to swear in Mr. Thorpe  
10 so that he would be available in the event that  
11 his input is helpful in answering any questions.

12 Under Section 102.424(f) of the  
13 Board's procedural rules, the pre-filed testimony  
14 is entered into the record as if read and we could  
15 begin by proceeding immediately to questions that  
16 participants may have on the basis of that  
17 testimony. After those, we can turn to the  
18 testimony of any witness who did not pre-file for  
19 this hearing, but would like to testify here today.

20 At the end of the table at which  
21 the Agency personnel are seated is a signup sheet  
22 so that anyone who would like testify may indicate  
23 that they would like to do so at this hearing.

24 Of course, for the court

1 reporter transcribing today's proceeding, please  
2 speak clearly. We shouldn't have any trouble  
3 making ourselves heard here, but if you would avoid  
4 speaking at the same time as any other person, I  
5 know that she would appreciate that for the sake  
6 of clarity.

7 Do we have any questions about  
8 the very simple proceedings going forward? Very  
9 good. Neither seeing nor hearing any, Mr. Mohr,  
10 I think we've reached the point where we could  
11 swear in the two Agency witnesses that I had  
12 referred to and get underway.

13 MR. MOHR: I'm fine with that.

14 HEARING OFFICER FOX: Very good.

15 (Mr. Hill sworn.)

16 (Mr. Thorpe sworn.)

17 MR. MOHR: At this time, I would  
18 like to move to have Mr. Hill's pre-filed testimony  
19 entered into the record as an exhibit into the  
20 proceedings, which would be Exhibit 1.

21 HEARING OFFICER FOX: And you have a  
22 copy of that?

23 MR. MOHR: I have a copy of that.

24 HEARING OFFICER FOX: Okay. Very

1 good.

2 MR. MOHR: Do you have an exhibit  
3 sticker?

4 HEARING OFFICER FOX: I don't. I'll  
5 just handwrite one, though, and that will work.  
6 Than you very much.

7 (Document marked as  
8 Hearing Exhibit No. 1  
9 for identification,  
10 2/10/11.)

11 HEARING OFFICER FOX: As you have  
12 heard, Mr. Mohr has moved to admit the pre-filed  
13 testimony, the testimony pre-filed on January 18th  
14 of 2011 of Mr. Michael Hills on behalf of the IEPA  
15 into the record as Exhibit No. 1. Are there any  
16 objections to the motion at all?

17 Neither seeing nor hearing any  
18 objection, Mr. Mohr, that will be marked and  
19 admitted Hearing Exhibit No. 1 in this proceeding.  
20 Thank you for supplying that copy.

21 (Hearing Exhibit No. 1  
22 has been admitted  
23 accordingly.)

24 HEARING OFFICER FOX: With that, we



1 can begin with the substance of the Agency's  
2 presentation. If you have a brief introduction that  
3 you or Mr. Hills would like to make, we can proceed  
4 to that or go immediately to questions as you  
5 prefer.

6 MR. MOHR: Okay. I'll start.

7 Members of the Board and  
8 Hearing Officer Fox, thank you for having us here  
9 today. My name is Ken Mohr and I'm an attorney  
10 for the Illinois EPA, Bureau of Air.

11 As we briefly -- Mr. Fox briefly  
12 mentioned the Agency filed this rulemaking to update  
13 its vehicle inspection and maintenance emission  
14 testing standards simply to be consistent with the  
15 vehicle emissions inspection law of 2005 as amended.  
16 It's also referred to as the veil, V-E-I-L, of 2005  
17 625 ILCS 5/13(c).

18 The Vehicle Emissions Inspection  
19 Law of 2005 was enacted in 2005, passed by the  
20 Illinois legislature and amended thereafter. As  
21 it pertains to this rulemaking, the veil of 2005  
22 exempted pre-1986 vehicles from the testing  
23 requirement and dropped the transient loaded mode  
24 or I/M 240 emissions test.

1                   Before we get to witnesses and  
2 testimony, I would like to just note for the record  
3 that JCAR's first notice version, which was filed  
4 on January 20th of 2001, contains a scrivener's error  
5 at Section 240.102 in the definition preconditioning  
6 mode. In the first line of that definition, the  
7 terms "loaded mode or" should be struck.

8                   That scrivener's error does not  
9 appear in the Illinois Register version of the  
10 proposed rule. I would like to request that the  
11 Board address that scrivener's error and JCAR have  
12 that corrected going forward.

13                   As we mentioned, I have today  
14 with me two witnesses, Michael Hills from the  
15 Technical Services Section of the Division of  
16 Mobile Source Programs within the Bureau of Air  
17 of the Illinois EPA and Steven Thorpe, Manager  
18 Compliance Assurance in the Division of Mobile  
19 Source Programs within the Bureau of Air of the  
20 Illinois EPA. They are here to answer any questions  
21 that might be asked of them.

22                   We have already handled the  
23 issue of the pre-filed testimony. Mr. Thorpe did  
24 not obviously file pre-filed testimony. He is

1 here to answer any questions as necessary.

2 At this time we can move to  
3 any questions of Mr. Hills. He does not have  
4 any comments before we get started with that.

5 HEARING OFFICER FOX: Very good,  
6 Mr. Mohr. Thank you for your comments. We can  
7 certainly turn to any questions that any of you  
8 present may have of the Agency.

9 Before posing your first  
10 question, just for the benefit of the record,  
11 please identify yourself by name and by any  
12 organization you may represent, that would be  
13 very helpful at this point.

14 Does anyone have a question that  
15 they wish to pose to Mr. Hills on the basis of  
16 his testimony?

17 Neither see nor hear any  
18 questions on the part of anyone who is present.  
19 Do any of the Board members or any of the Board  
20 staff have any questions that they wish to pose  
21 to Mr. Hills on the basis of his testimony?

22 MS. MOORE: It's pretty clear.

23 HEARING OFFICER FOX: Neither seeing  
24 nor hearing any questions on the part of the Board,

1 why don't we go off or the record for just a moment.

2 (Whereupon, a discussion  
3 was had off the record.)

4 HEARING OFFICER FOX: In going off  
5 of the record to address some procedural issues,  
6 we took up a couple of matters pertaining to this  
7 hearing.

8 First of all, the copies of the  
9 transcript of today's hearing are expected to be  
10 available at the Board by Monday, February 14, 2011.  
11 Very soon after that, the Board will post that  
12 transcript, the document, to the Board's web site  
13 and it will be listed under the docket number, of  
14 course, R11-19.

15 The second hearing has been  
16 scheduled and will take place as scheduled on  
17 Wednesday, February 23, 2011. That is at 9:00  
18 a.m. in Edwardsville at the Madison County  
19 Administration Building, with deadline of Wednesday,  
20 February 16th of 2011 to pre-file testimony for  
21 that second hearing.

22 Because that is a short amount  
23 of time before the day of hearing, the, quote,  
24 mailbox rule, unquote, at Section 101.300 of the

1 Board's procedural rules will not apply so that  
2 the clerk's office must receive that pre-filed  
3 testimony on or before the close of business on  
4 February 16th.

5                   Anyone, of course, may file  
6 written public comments in this rulemaking with  
7 the clerk of the Board. Those comments may  
8 be filed electronically through the clerk's office  
9 online. Any questions about electronic filing  
10 should be directed to the office of the Board's  
11 clerk.

12                   Filings with the Board, whether  
13 paper or electronic, must also be served on the  
14 hearing officer and on those entities on the service  
15 list. Before filing, I would ask that you please  
16 check with the Board's clerk to ensure that you have  
17 the most recent and complete version of the service  
18 list. If anyone has questions about the procedural  
19 aspects of this rulemaking, my contact information  
20 is listed plainly on the Board's web site.

21                   Mr. Mohr, I believe you had one  
22 other issue you wish to take up before we adjourned  
23 this hearing today.

24                   MR. MOHR: Yes. The joint committee

1 on this rulemaking has filed a requested and  
2 economic and budgetary analysis pursuant to the  
3 Illinois Administrative Procedure Act at Section  
4 5-40(c).

5 The Agency believes that the  
6 response to this economic and budgetary analysis  
7 is not required pursuant to the Vehicle Emissions  
8 Inspection Law of 2005 at Section 13c-20(a). That  
9 subsection specifically states that the rulemaking  
10 provisions of the Illinois Administrative Procedure  
11 Act did not apply to rules adopted under that  
12 subsection.

13 These vehicle emissions inspection  
14 rules will be adopted and have been filed under  
15 that subsection. The section of the Illinois  
16 Administrative Procedure Act cited by JCAR 5-40(c)  
17 is entitled, "General Rulemaking," and, thus, the  
18 Agency believes that because this filing has been  
19 made under Section 13c-20(a), the economic and  
20 budgetary analysis requested by JCAR does not  
21 apply as it is requested under the general  
22 rulemaking provisions of the Administrative  
23 Procedure Act, which do not apply.

24 However, should the Board choose

1 to respond to the economic and budgetary analysis  
2 requested by JCAR, the Agency has no objection to  
3 that and will cooperate fully with whatever  
4 information that the Board needs to that end.  
5 That's it.

6 HEARING OFFICER FOX: Very good.  
7 Mr. Mohr, thank you for clarifying the record.  
8 Certainly on the Board's behalf, I appreciate  
9 your closing statement of availability to help  
10 with any information the Board might consider  
11 necessary to perform.

12 With that, I think we have  
13 closed our business for this first hearing.  
14 Are there any questions before we do adjourn?  
15 Questions of any nature?

16 Neither seeing nor hearing  
17 any, Mr. Mohr, and all of you who are present  
18 from the Agency, I appreciate your travel on a  
19 very cold day under fairly ^ arguous conditions,  
20 and for your attention to this matter. With  
21 that, we are adjourned. Thank you very much.

22 MR. MOHR: Thank you to the Board  
23 for holding this hearing.

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(Whereupon, the proceedings  
were adjourned.)

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF C O O K )  
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6 I, LORI ANN ASAUSKAS, CSR, RPR,  
7 do hereby state that I am a court reporter doing  
8 business in the City of Chicago, County of Cook,  
9 and State of Illinois; that I reported by means  
10 of machine shorthand the proceedings held in the  
11 foregoing cause, and that the foregoing is a true  
12 and correct transcript of my shorthand notes so  
13 taken as aforesaid.

14

15

16

Lori Ann Asauskas

17

Lori Ann Asauskas, CSR, RPR.

18

Notary Public, Cook County, Illinois

19

20 SUBSCRIBED AND SWORN TO  
21 before me this \_\_\_ day  
22 of \_\_\_\_\_, A.D., 2011.

22

23

\_\_\_\_\_  
Notary Public

24

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