

ILLINOIS POLLUTION CONTROL BOARD
April 20, 2011

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R 11-20
PART 229:) (Rulemaking - Air)
HOSPITAL/MEDICAL/INFECTIOUS)
WASTE INCINERATORS)

NOTICE OF HEARING

DATES, TIMES, PLACES:

Wednesday, June 8, 2011
9:00 a.m.
Dewitt County Building
Courtroom B
201 W. Washington
Clinton, IL

Tuesday, June 28, 2011
11:00 a.m.
JAMES R. THOMPSON CENTER
Room 11-512
100 W. Randolph St.
Chicago, IL

PURPOSE OF HEARING:

Merit and economic

ATTENDING BOARD MEMBER:

Carrie Zalewski

HEARING OFFICER:

Kathleen M. Crowley

HEARING OFFICER ORDER

Procedural History

In summary, this order reschedules hearing in this matter for June 8 and June 28, 2011. To expedite hearings, attached to the order are questions concerning the previously filed testimony developed by the Board's Technical Unit.

On December 23, 2010, the Illinois Environmental Protection Agency (Agency or IEPA) filed a proposal for amendments to the Board's air rules pursuant to the general rulemakings provisions of Section 27 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/27 (2008) and the Board's procedural rules at 35 Ill. Adm. Code 102.

In the Statement of Reasons (SR) accompanying the proposal, the Agency stated that this proposal contains amendments to 35 Ill. Adm. Code Part 229 "Hospital/Medical/Infectious Waste Incinerators" (HMIWI). The proposed rules would reflect amendments promulgated by

the United States Environmental Protection Agency (USEPA) to federal air quality standards,¹ including new source performance standards (NSPS) and emissions guidelines (EG). SR at 1. Changes include revised emission standards (more stringent than existing ones) revised waste management plan provisions (for greater flexibility in demonstrating compliance), and removal of an existing startup, shutdown, and malfunction provision. *Id.*

The compliance date for the new rules would be January 1, 2014. The Agency reports Illinois currently has only one HMIWI to which the new rules would apply: the Stericycle, Inc. facility located in Clinton.

In a January 6, 2011 order, the Board accepted the proposal for hearing. The Board reserved ruling on two motions that accompanied the proposal: a motion waiver of copy submission requirements, and a motion for expedited review (MER). In the MER, IEPA says that Illinois can avoid a FIP, if Illinois submits a SIP revision to USEPA by October 6, 2011 (MER at 2). In recognition of the Agency's desire for expeditious movement in this proceeding, the hearing officer has established two hearing dates, after consultation with the Agency, that are among the earliest available on the Board's crowded spring calendar.

By order of February 1, 2011, hearing dates were set of March 22, 2011 and April 20, 2011. Consistent with the hearing officer order, the Agency pre-filed testimony on February 18 and Stericycle pre-filed testimony on February 22, 2011. But, due to an error in the office of the Board's Clerk, timely newspaper notice of these hearings was not properly provided as required by the Act and the federal Clean Air Act, so they were cancelled.

The rescheduled hearing dates are June 8 and June 28, 2011.

The Hearings

The Board will conduct two hearings in order to allow the proponent and any other interested participants the opportunity to present testimony on the merits and economic impact of the rulemaking proposal. At hearing, all persons who testify will be sworn in and subject to questioning. *See, generally*, the Board's procedural rules for rulemaking at 35 Ill. Adm. Code 102.

As indicated above in the notice of hearings, the first hearing will begin on Wednesday, June 8, 2011 and will continue until the day's business is completed, but in no event later than 5:00 p.m. The second hearing is scheduled to begin Tuesday, June 28, 2011, and will continue

¹ USEPA adopted its "Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators" at 74 Fed. Reg. 51368 (Oct. 6, 2009). States were required to have State Implementation Plans (SIP) revisions with the new incinerator rules filed within a year of the date of USEPA promulgation of the new rules, *i.e.* by October 6, 2010. Section 129(b)(3) of the federal Clean Air Act, 42 USC7429(c), requires USEPA to develop a Federal Implementation Plan (FIP) within two years of federal rule promulgation *i.e.* by October 6, 2011.

until the day's business is completed, but in no event later than 4:30 p.m. As always, given the hearing officer's present inability to assess the length of these hearings, any potential participants are advised to arrive in timely fashion.

Unless driven by statutory due dates, the Board typically prefers to hold one or more hearings on a proposal before issuing a first notice opinion and order for publication in the *Illinois Register* to begin the rulemaking process under the Illinois Administrative Procedure Act. Cancellation of the first set of hearings has narrowed the Board's options. But, the hearing officer notes that the Board could still timely adopt rules on the schedule preferred by the Agency if the Board adopts a first notice proposal no later than the Board meeting scheduled for June 16, 2011.

The Board hypothetically could adopt the Agency's proposal as drafted for first notice without commenting on the merits of the proposal in advance of any hearings. But, given Stericycle's prefiled testimony concerning the proposed compliance dates, Board action in advance of hearing could be misconstrued as prejudgment on the merits of the proposal without allowing Stericycle to be heard.

Under these circumstances, it would be most helpful if the June 8 hearing could develop a record for Board deliberation that makes clear any agreements or disagreements the Agency and Stericycle have concerning the other's respective positions on the proposal. So, Board staff has taken steps to encourage the participants to refine their thinking concerning the Agency's proposal and Stericycle's testimony concerning the proposed compliance dates. Attached to this order are questions concerning the previously-filed testimony, which this order requests that the Agency and Stericycle respond to in writing in advance of hearing, on or before May 23, 2011.

Pre-Filing Deadlines

Participants who intend to testify must pre-file their testimony and serve the testimony on the hearing officer and all persons on the Service List. Before filing pre-filed testimony or any other document with the Clerk, please check for the most recent version of the Service List with the hearing officer or the Clerk's Office.

Except for the Agency and Stericycle (who have previously pre-filed testimony), any persons wishing to testify at the first hearing are directed to pre-file all of their testimony and any related exhibits no later than Monday, May 23, 2011. Under Section 27 of the Act (415 ILCS 5/27 (2006)), the first hearing is not limited to the testimony of the proponent. But, the hearing officer presently intends to allow the Agency as proponent to present the testimony of all of its witnesses before hearing the testimony of other participants. To further maximize hearing efficiency, all participants are requested to review testimony pre-filed by others.

The Agency and Stericycle are directed to consider the questions appended to this hearing officer order, and to pre-file answers to these questions on or before May 23, 2011.

Except for the Agency and Stericycle, participants wishing to testify at the second hearing are directed to pre-file all of their testimony and any related exhibits no later than

Monday, June 14, 2011. Participants are again requested to review testimony pre-filed by others in advance of hearing. As to the Agency and Stericycle, any pre-filing deadlines for the second hearing will be discussed during the June 8 hearing.

The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of this pre-filed testimony, and the Board's Clerk must therefore receive these documents before the close of business on the specified dates. However, pre-filed testimony and other 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. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Order of Hearings

All pre-filed testimony will be entered into the record as if read, unless unanticipated circumstances dictate otherwise. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of testimony will be allowed if a witness wishes to provide one before responding to questions. Participants who do not pre-file testimony will be allowed to testify as time permits only after the conclusion of pre-filed testimony and questions based upon it. Similarly, any participant who wishes to offer a public comment will be allowed to do so as time permits at the close of pre-filed testimony and the questions based upon it. Consequently, any person wishing to testify at either of the two hearings is urged to pre-file their testimony in order to ensure that they have an opportunity to testify. In addition, the Board's procedural rules 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.

The hearing scheduled to begin on June 8, 2011, will begin with the Agency's presentation of its case as the proponent. After the Agency has answered all questions from other participants, Stericycle may present its testimony. If time permits before the conclusion of the first hearing, other persons who have pre-filed may testify. The Board has reserved sufficient time for each hearing and anticipates that any person who wishes to testify will have an opportunity for testimony and any cross-examination. In the event that any person who pre-files testimony for the first hearing cannot testify on June 8, 2011, because time does not allow it, that person will be given priority to testify on June 28, 2011. Persons who pre-file questions will be given priority in questioning other participants.

The June 28, 2011 hearing will begin with any testimony from any participant who pre-filed testimony for the first hearing and who was not able to testify at that time. Participants who pre-filed testimony for the second hearing will then present that testimony. Persons who pre-file questions will be given priority in questioning other participants.

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 pre-filed testimony and the questions based upon it. Again, written public comments may be submitted to the Board. *See* 35 Ill. Adm. Code 102.604.

Finally, the hearing officer, upon agreement of the participants or upon motion to the hearing officer, may change the order of testimony at these hearings. *See* 35 Ill. Adm. Code 102.420, citing 35 Ill. Adm. Code 101.Subpart F.

Service and Notice Lists

The Board will establish a notice list and a service list for this proceeding. Persons wishing to be added to either list may contact the Clerk's Office or the hearing officer.

All persons on the notice list will receive notice of Board opinions and orders and hearing officer orders. 35 Ill. Adm. Code 102.422(a).

Under Section 102.422(b) of the Board's procedural rules,

[t]he hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list. 35 Ill. Adm. Code 102.422(b).

In addition to receiving notice of all Board actions and hearing officer orders, persons on the service list will receive pre-filed testimony and other filings in this proceeding.

The service list is intended for persons such as those who will testify and participate actively in this rulemaking. Persons on the Service List for this rulemaking receive not only the Board's opinions and orders but also other filings such as pre-filed testimony and public comments. But, persons on the service list are also required to serve copies of the filings they make on other persons on the service list.

Interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number: R11-20. 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, 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.

At the close of the second hearing, the hearing officer will set a date by which the record will close and all public comments must be submitted. *See* 35 Ill. Adm. Code 102.108. As the Board is aware that the Agency would appreciate Board decision making as soon as possible, the post-hearing comment period will not be lengthy unless unanticipated circumstances dictate otherwise.

IT IS SO ORDERED.

Kathleen M. Crowley

Kathleen M. Crowley

Hearing Officer, Illinois Pollution Control Board

100 West Randolph Street, Suite 11-500

Chicago, Illinois 60601

(312) 814-6929 crowlek@ipcb.state.il.us

ATTACHMENT A
Board Staff Questions

Although the questions below are directed to specific participants, anyone is free to address any of the questions posed below:

Questions for IEPA

1. Section 229.102 Definitions

In the definition of “Commercial HMIWT”, please clarify whether the term “unrelated” means “not owned or operated by the owner of the HMIWT”.

The definitions of the terms “Minimum reagent flow rate” and “Minimum secondary chamber temperature” require demonstration of compliance with the applicable emission limits, including the limit for nitrogen oxide (NO_x). Would it be acceptable to the Agency if a cross reference to the emissions limit of Subpart E of Part 229 is added to both the definitions?

2. Section 229.104 Incorporations by Reference

IEPA has requested a waiver for filing copies of the items proposed to be incorporated by reference in Section 229.104. (The Board has yet to rule on the motion for waiver.)

Although IEPA provided an original of the items in proposed Section 229.104(h) and (i), IEPA did not file originals of proposed Section 229.104(f), (g), and (j). Since the latter are not items that need to be purchased, the Agency is requested to please provide one original of each so that the record reflects the version that appears as of the date of the proposal.

Rules incorporating materials by reference must also include the name and address of the entity/organization from which a copy of the material may be obtained by interested persons. The Agency is requested to please provide the relevant information for the materials proposed to be incorporated by reference at Sections 229.104 (h), (i) and (j).

3. Section 229.110 General Applicability

The proposed subsection (a) sets forth the applicability requirements that cover HMIWIs for which construction commenced before December 1, 2008, or for which modifications commenced before April 6, 2010. The Agency is requested to please clarify whether HMIWIs for which construction commenced after December 1, 2008, or for which modification commenced after April 6, 2010 are subject to the New Source Performance Standards (NSPS) for HMIWIs under 40 CFR § 60 Subpart Ec. If so, would it be acceptable to the Agency to add a new subsection (a)(3) reflecting the applicability of the NSPS to HMIWIs beyond the dates specified in subsection (a)(2).

The proposed subsection (h) appears to have a typographical error. The Agency is requested to clarify whether the proposed cross reference to the emission limits under Section 229.125(e) should be actually Section 229.125(c).

4. **Section 229.115 Compliance Schedules for HMIWIs that will Continue to Operate**
- (a) Stericycle submitted an alternate proposal under 229.115(b), basically suggesting different dates for the increments of progress. Are these dates acceptable to the Agency? If not, the Agency is requested to please explain why not. If possible, the Agency is further requested to propose an alternate timeline for Stericycle's consideration. (The hearing officer notes that the Agency and Stericycle remain free to discuss this matter between themselves in advance of hearing, and are encouraged to present any mutually acceptable alternative timelines at or before hearing on June 8, 2011.)
- (b) Would it be acceptable to the Agency if the term "paragraph" is replaced by the term "subsection" (as the Joint Committee on Administrative Rules may require) in the proposed subsections (b)(1) and (b)(2).

5. **Section 229.116 Compliance Schedules for HMIWIs that will Shut Down**
Under Section 229.116, is there an opportunity for HMIWIs pursuing the extended compliance timeframe with a deadline of October 6, 2014 (proposed 35 IAC 229.115(b)) to decide to shut down at a date later than January 1, 2014?

If so, should the rules include a provision under Sections 229.115(b)(3) and 229.116(b) to recognize a later date than January 1, 2014 for those HMIWIs pursuing the extended compliance timeframe under Section 229.115(b)(2), as suggested below?

Possible language (the Agency is encouraged to suggest alternate language if the following is not acceptable):

Section 229.115(b)(3)

(A) Any owner or operator of an HMIWI that fails to demonstrate compliance with this Part by October 6, 2014, shall cease operation of the HMIWI until compliance with the provisions of this Part is achieved; **or**

(B) **Any owner or operator of an HMIWI pursuing the extended compliance timeframe under subsection (b)(2) of this Section that chooses to permanently shut down the HMIWI will comply with the requirements of Section 229.116.**

Section 229.116(b)

Take the following affirmative steps to demonstrate that the HMIWI has been rendered permanently inoperable by September 15, 2000, for an HMIWI as defined in Section 229.110(a)(1), or by January 2, 2014 for an

HMIWI as defined in Section 229.110(a)(1) and (a)(2) of this Part, **or by October 6, 2014 for an HMIWI pursuing the extended compliance timeframe pursuant to Section 229.115(b)(2).**

6. **Section 229.120 CAAPP Permit Requirements**

Section 229.115(b)(2) allows for extending the deadline for compliance with Part 229 requirements from January 1, 2014 to October 6, 2014 if certain conditions are met. The proposed Section 229.120(a)(2) requires compliance with the permit requirements by January 1, 2014, but does not provide for the extended compliance deadline of October 6, 2014 under Section 229.115(b)(2). The Agency's proposal includes several provisions in other sections of the rules that prescribe the January 1, 2014 deadline without accounting for the extended compliance deadline of October 6, 2014. Please comment on whether the following requirements should be amended, as suggested, to recognize the extended deadline under Section 229.115(b)(2):

Section 229.120(a)(2)

By January 1, 2014, **except as provided for in Section 229.115(b)(2)(A) of this Part,** for an HMIWI as defined in Section 229.110(a)(1) or (a)(2) of this Part.

Section 229.125(c)

On or after January 1, 2014, **except as provided for in Section 229.115(b)(2),** each owner or operator of a small, medium, or large HMIWI as defined in Section 229.110(a)(1) and (a)(2) of this Part...

Section 229.126(c)

On or after January 1, 2014, **except as provided for in Section 229.115(b)(2),** a rural HMIWI,...

Section 229.162(e) and (f)

On or after January 1, 2014, **except as provided for in Section 229.115(b)(2),** the owner or operator...

Section 229.166(a)(2)

On or after January 1, 2014, **except as provided for in Section 229.115(b)(2),** for a small, medium or large HMIWI, ...

Section 229.168(a)(2)

On or after January 1, 2014, **except as provided for in Section 229.115(b)(2),** for a rural HMIWI, ...

Section 229.184(b)(2)

On or after January 1, 2014, **except as provided for in Section 229.115(b)(2),** the test data and values...

Section 229.184(c)(2)

By January 1, 2014, **except as provided for in Section 229.115(b)(2)**, and by January 1 of each year thereafter, ...

Section 229.184(c)(3)(B)

On or after January 1, 2014, **except as provided for in Section 229.115(b)(2)**, the values for site-specific...

7. **Section 229.126 Emissions Limits for Rural HMTWIs**

Should Section 229.126(c) and (e) also apply to rural HMTWIs as defined in Section 229.110(a)(2)?

Possible language (the Agency is encouraged to suggest alternate language if the following is not acceptable):

Section 229.126(c): On or after January 1, 2014, **except as provided for in Section 229.115(b)(2)**, a rural HMTWI, as defined in Section 229.110(a)(1) **and (a)(2)** shall comply with...

Section 229.126(e): ...no owner or operator of a rural HMTWI, as defined in Section 229.110(a)(1) **and (a)(2)** of this Part...

8. **Section 229.146 Annual Testing for Opacity**

Proposed Section 229.146(a) and (b) do not specify “Before January 1, 2014” and “On and after January 2, 2014” as in proposed Section 229.148(a)(1) and (2). Should an initial timeframe be specified to indicate that HMTWIs subject to emissions limits under Section 229.125(c) do not need to comply with the opacity test schedule until “On or after January 1, 2014”?

9. **Section 229.150 Compliance with Operating Parameter Values**

Section 229.150(a) states, “...an HMTWI...shall not operate above any of the applicable maximum or below any of the applicable minimum operating parameter values specified in Appendix B of this Part.” Appendix B does not actually appear to list “operating parameter values”, but rather “Operating Parameters to be Monitored...” Would you please comment on a possible clarification of this section since no actual minimum or maximum values are listed in Appendix B?

Should Section 229.150(a) reference proposed Section 229.152(b) for instances where applicable operating parameter values are not specified in Appendix B of this Part 229?

Possible language:

Section 229.150(a) ...an HMTWI...shall not operate above any of the applicable maximum or below any of the applicable minimum operating parameter values specified in Appendix B of the Part, **except as provided for in Section 229.152(b)**.

10. Section 229.160 Compliance Requirements for Rural HMIWIs

For the benefit of the record, would you please explain how “Operating parameter limits do not apply during performance tests” (Proposed Section 229.160(c)), yet “Operation above the maximum charge rate or below the minimum secondary chamber temperature determined during the initial performance test shall constitute a violation of the established operating parameter(s)” (Proposed Section 229.160(d))? Similar wording appears at proposed Section 229.150(d).

Question for Stericycle, Inc.**1. Section 229.184 Reporting Requirements**

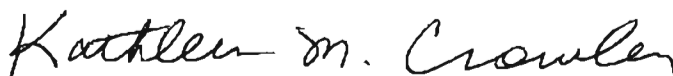
Stericycle’s prefiled testimony provides an alternative proposal for the compliance schedule proposed by the IEPA in Section 229.115(b)(2)(B)(i) – (v) for HMIWI. Stericycle’s proposed date to complete the initial performance test [Section 229.115(b)(2)(B)(v)] is “August 2, 2014”. Stericycle is requested to please clarify whether the reporting requirements deadline of January 1, 2014 under Section 229.184(c)(2) needs to account for the extended compliance timeframe of 229.115(b)(2). If so, Stericycle is requested to please suggest an alternate date of compliance for reporting requirements.

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on April 20, 2011, to each of the persons on the attached service list.

It is also hereby certified that a true copy of the foregoing order was hand delivered to the following on April 20, 2011:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St, Ste. 11-500
Chicago, IL 60601



Kathleen M. Crowley
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R11-20 Notice List 4/20/11

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