

ILLINOIS POLLUTION CONTROL BOARD

April 27, 2011

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STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
)  
REASONABLY AVAILABLE CONTROL ) R11-23  
TECHNOLOGY (RACT) FOR VOLATILE ) (Rulemaking - Air)  
ORGANIC MATERIAL EMISSIONS FROM )  
GROUP II AND GROUP IV CONSUMER & )  
COMMERCIAL PRODUCTS: PROPOSED )  
AMENDMENTS TO 35 ILL. ADM. CODE )  
211, 218, and 219 )

**HEARING OFFICER ORDER**

The first hearing in this “fast-track” rulemaking docket took place as scheduled on Wednesday, April 27, 2011, and the Board received the transcript (Tr.) later that day.

As required by Section 28.5(f) of the Environmental Protection Act (Act), the Board has scheduled a second hearing beginning Wednesday, May 18, 2011, in Chicago. Public Act 96-308, eff. Aug. 11, 2009 (P.A. 96-308) (re-enacting repealed Section 28.5). Section 28.5(f)(1) provides that, “[w]ithin 7 days after the first hearing, any person may request that the second hearing be held.” P.A. 96-308. Section 102.304(c) of the Board’s procedural rules provides in pertinent part that “[t]he request may be made on the record at the first hearing or in writing. If done in writing it must be filed with the Board and served upon the service list.” 35 Ill. Adm. Code 102.304(c). No person requested on the record that the second hearing be held as scheduled. *See* Tr. at 24-26

Accordingly, the Board will hold open the statutory seven-day period during which “any person may request that the second hearing be held.” P.A. 96-308. As it can no longer be made on the record at the first hearing, the request must be made in writing to the Board on or before Wednesday May 4, 2011, and served upon the entities on the service list. For the purpose of filing a request to hold the second hearing with the Board, the “mailbox rule” at 35 Ill. Adm. Code 101.300(c) does not apply. The Board’s Clerk must receive the request before the close of business on Wednesday, May 4, 2011. Although a request may be filed electronically through COOL, all electronic or approved fax filings must be received by the Clerk’s Office no later than 4:30 PM on that date.

In the event that the Board does not receive a timely request to hold the second hearing, the hearing officer intends to issue an order cancelling the second and third hearings. Section 28.5(f)(3) provides that the third hearing “shall be devoted *solely* to any Agency response to the material submitted at the second hearing and to any response by other parties. P.A. 96-308 (emphasis added). Under Section 28.5 (k), the hearing officer in that order would also expect to set a deadline for filing post-hearing comments and closing the record. *Id.*

In the event that the Board does receive a timely request to hold the second hearing as scheduled, the hearing officer must require pre-filing of testimony on or before Friday, May 6, 2011. *See* P.A. 96-0308 (requiring pre-filing at least 10 days before hearing). For the purpose of serving pre-filed testimony for the second hearing on the Board, the "mailbox rule" at 35 Ill. Adm. Code 10 1.300(c) does not apply. The Board's Clerk must receive this pre-filed testimony before the close of business on Friday, May 6, 2011. Although pre-filed testimony may be filed electronically through COOL, all electronic or approved fax filings must be received by the Clerk's Office no later than 4:30 PM on that date. Pre-filed testimony must also be served on all persons on the service list as of 4:30 PM on Tuesday, May 3, 2011. Persons wishing to pre-file testimony for the second hearing may obtain a copy of the service list by contacting the hearing officer after 9:30 AM on Wednesday, May 4, 2011.

IT IS SO ORDERED



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