

JUL 12 2012

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2012

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)	
)	
GASOLINE VOLATILITY STANDARDS)	R12-24
AND MOTOR VEHICLE REFINISHING;)	(Rulemaking—Air)
PROPOSED AMENDMENTS TO 35 ILL.)	
ADM. CODE PARTS 211, 215, 218, AND)	
219)	

ORIGINAL
RETURN TO CLERK'S OFFICE

NOTICE OF HEARING

DATES, TIMES, PLACES:

Thursday, August 23, 2012
1:00 p.m.
Illinois Environmental Protection Agency Office
Pollution Control Board Hearing Room
1021 N. Grand Avenue East
Springfield, IL

Thursday, September 20, 2012
1:00 p.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

The Proposal

On April 2, 2012, the Illinois Environmental Protection Agency (Agency) filed a proposal for rulemaking under Sections 10, 27 and 28 of the Environmental Protection Act (Act), 415 ILCS 5/10, 27, 28 (2012). The proposal concerns the Illinois rules for gasoline volatility and for vehicle refinishing, and seeks to amend 16 sections of rule text. The proposal consists of a 34-page statement of reasons (SR) with attachments, an 18-page Technical Support Document (TSD) with attachments, accompanied by a motion for relief from certain copying requirements, which is hereby granted.

In summary, IEPA proposes repeal of the state gasoline volatility standards in ozone attainment areas codified at 35 Ill. Adm. Code 215.585, since these have been replaced by federal standards. SR at 1-2. Repeal is also proposed of the state standards in the Chicago and

In compliance with the Americans With Disabilities Act and other applicable federal and State laws, the hearings will be accessible to individuals with disabilities. Persons requiring auxiliary aids should contact John T. Theriault, Assistant Clerk of the Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, at telephone number (312) 814-3620, or TDD number (312) 814-6032, at least five days before the particular hearing.

Metro-East non-attainment areas (respectively, 35 Ill. Adm. Code 218.585 and 35 Ill. Adm. Code 219.585), because they have "essentially been superseded by Illinois participation in the Federal reformulated gasoline (RFG) program." SR at 2. Various clean-up amendments are also proposed, as necessitated by the proposed repeal. *Id.*

The proposal would impact motor vehicle refinishing operations by allowing, in application of spray coatings, alternative use of a High Volume Low Pressure (HVLP) equivalent gun for which USEPA has given written approval (*see* 35 Ill. Adm. Code 218.784 and 219.784) and repeal of a state registration program codified at 35 Ill. Adm. Code 218.792.784 and 219.792 that overlaps with the federal program. SR at 1.

Board and Other Actions to Date

By opinion and order of April 19, 2012, the Board accepted the proposal for hearing. Additionally, without comment on the merits, the Board authorized the first notice publication of the proposal in the *Illinois Register* consistent with requirements of the Administrative Procedure Act (APA). 5 ILCS 100 *et seq.* (2010). The proposal was published at 36 Ill. Reg. 6913, 6934, 6950, and 6975 (May 19, 2012). No public comments have been filed to date. But, on May 16, 2012, the Joint Committee on Administrative Rules filed a request for economic and budgetary request under Section 5-40(c) of the APA.

Finally, on June 27, 2012, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct an economic impact study (EcIS) of the proposal, as required by Section 27(b) of the Act. The Board requested a response to the request no later than August 1, 2012. None has yet been received.

Section 27(b) of the Act requires the Board to hold a hearing on the economic impact of a proposal, at which the Board is to receive any testimony concerning any EcIS prepared by DCEO, or any "explanation for not preparing an [EcIS]."

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. The Board will also receive testimony on any economic impact study conducted by DCEO on the proposed rules or on DCEO's decision not to perform a study. *See* 415 ILCS 5/27(b) (2010).

As stated above in the notice of hearings, the first hearing will begin on Thursday, August 23, 2012 at 1:00 p.m. 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 Thursday, September 20, 2012 and will continue until the day's business is completed, but in no event later than 4:30 p.m. However, given the hearing officer's present inability to assess the length of these hearings, and potential participants are advised to arrive in timely fashion, as the hearings will be adjourned when no one present wishes to present testimony or ask questions.

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.

Participants in the first hearing on August 23, 2012 are directed to pre-file all of their testimony and any related exhibits no later than Thursday, August 9, 2012. Under Section 27 of the Act (415 ILCS 5/27 (2010)), 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. Therefore, any other person wishing to testify at the first hearing should also pre-file their testimony by August 9. To further maximize hearing efficiency, participants are requested to review testimony pre-filed by others, and to pre-file questions concerning that testimony on or before Monday, August 20, 2012

Participants wishing to testify at the second hearing on September 20, 2012 are directed to pre-file all of their testimony and any related exhibits no later than Tuesday, September 4, 2012. Participants are again requested to review testimony pre-filed by others, and to pre-file questions concerning that testimony on or before Monday, September 17, 2012.

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 though 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 August 23, 2012 will begin with the Agency's presentation of its case as the proponent. After the Agency has answered all questions from other participants, and if time permits before the conclusion of the first hearing, other persons

who have pre-filed may testify. Testimony concerning any DCEO EcIS or lack thereof may follow. Based on the information currently available, the hearing officer believes she 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 August 23, 2012, because time does not allow it, that person will be given priority to testify on September 20, 2012. Persons who pre-file questions will be given priority in questioning other participants.

The September 20, 2012 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. Testimony concerning any DCEO EcIS or lack thereof may follow.

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.

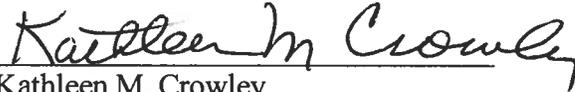
The service list is intended for persons such as those who will testify and participate actively in this rulemaking. Persons on the Service List for this rulemaking receive not only the Board's opinions and orders but also other filings such as pre-filed testimony and public comments. But, persons on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

make on other persons on the service list. Please note that the participants are free to waive service of hard copy of documents and to receive service only by electronic means.

Interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number: R12-24. 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.ipc.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.



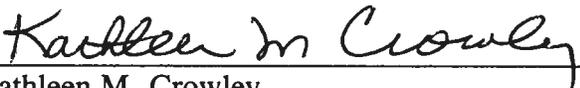
Kathleen M. Crowley
Hearing Officer, Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-6929 crowlek@ipcb.state.il.us

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on July 12, 2012, to each of the persons on the attached list.

It is also hereby certified that a true copy of the foregoing order was hand delivered to the following on July 12, 2012.

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



Kathleen M. Crowley
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St. Ste. 11-500
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SERVICE LIST

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