

ILLINOIS POLLUTION CONTROL BOARD
February 9, 2015

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
MANAGEMENT OF USED AND WASTE) R15-19
TIRES: PROPOSED AMENDMENTS TO) (Rulemaking - Land)
35 ILL. ADM. CODE 848)

NOTICE OF HEARINGS



ORIGINAL

DATES, TIMES, AND LOCATIONS:

FIRST HEARING: BEGINNING THURSDAY, MARCH 5, 2015

1:00 PM
Illinois Environmental Protection Agency
Sangamo Conference Room
1021 North Grand Avenue East
Springfield, Illinois

SECOND HEARING: BEGINNING WEDNESDAY, APRIL 15, 2015

1:00 PM
James R. Thompson Center
Pollution Control Board Hearing Room, Suite 11-512
100 West Randolph Street
Chicago, Illinois

PURPOSE OF HEARINGS: Merit and Economic
ATTENDING BOARD MEMBER: Carrie K. Zalewski
HEARING OFFICER: Chad M. Kruse

HEARING OFFICER ORDER

On December 22, 2014, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend Part 848 of the Board's rules governing the management of used and waste tires. Accompanying the proposal was a Statement of Reasons (SR). The Agency's proposal was filed pursuant to Sections 27, 28, and 55.2 of the Environmental Protection Act (Act) and Section 102.202 of the Board's procedural regulations. 415 ILCS 5/27, 28, 55.2 (2012); 35 Ill. Adm. Code 102.202. The proposal states that, "[s]ome provisions in this proposal . . . are being submitted for the purpose of complying with Public Act 98-656, which, among other things, directs the Agency to propose certain revisions to the Part 848 rules." SR at 1-2.

In its Statement of Reasons, the Agency indicates that the rulemaking proposal is "intended to protect the State's residents from [the threats resulting from improper management of used and waste tires] while simultaneously minimizing impacts on markets and businesses that diminish those threats by recycling and reusing tires." SR at 1. The proposal attempts to

accomplish these goals, in part, by requiring tire tracking and record keeping along with establishing a tire storage permit program for specified tire storage sites. In addition, the Agency states that the proposal has benefited from three rounds of outreach with the Indiana/Illinois Tire Dealers Association resulting in feedback considered by the Agency in the proposal. SR at 2.

The Board will conduct two hearings in order to allow the Agency and any other interested participants the opportunity to present testimony and public comments on the merits and economic impact of the proposal. *See* 415 ILCS 5/28(a) (2012). At hearing, all persons wishing to testify will be sworn in and subject to questioning. The Board will also receive testimony on the Department of Commerce and Economic Opportunity's (DCEO) decision not to perform an economic impact study as indicated in DCEO's January 29, 2015 letter filed with the Board. *See* 415 ILCS 5/27(b) (2012).

Hearings and Prefiling of Testimony

The Board has set hearing dates and filing deadlines in this docket with consideration of the statutory deadline for effectiveness of the rulemaking set by Section 55.2(b-5) of the Environmental Protection Act, which provides that,

[n]ot later than 6 months after the effective date of this amendatory Act of the 98th General Assembly, the Agency shall propose, and, not later than 9 months after receipt of the Agency's proposal, the Board shall adopt, revisions to the rules adopted under this Title that are necessary to conform those rules to the requirement of this Title. 415 ILCS 5/55.2(b-5) (2014).

In addition, the Board has considered its general workload and rulemaking activity now underway.

Hearing Procedures and Pre-filing of Testimony

In the Statement of Reasons filed with the rulemaking proposal, the Illinois Environmental Protection Agency (Agency) stated that it intends to present the testimony of two Agency employees and a retained expert during Board hearings on its proposal. Mr. Todd Marvel, Manager of the Used Tire Unit of the Agency's Bureau of Land, and Mr. Brian White, Manager of the Financial Assurance Unit of the Agency's Bureau of Land will testify. Mr. Terry Gray, the technical expert retained by the Agency to assist in the development of the revisions to the rulemaking proposal will also testify.

Participants, including the Agency, who intend to testify at the first hearing are directed to pre-file all of their testimony and any related exhibits no later than Thursday, February 19, 2015. Participants pre-filing testimony for the first hearing are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, participants are encouraged to obtain the most recent version of the Service List through the Clerk's Office On-Line (COOL) on the Board's website (www.ipcb.state.il.us) or by contacting the Clerk's Office at 312-814-3629.

In order to expedite the first hearing and make it more efficient, participants are directed to pre-file written questions based on any testimony pre-filed for the first hearing no later than Thursday, February 26, 2015. *See* 35 Ill. Adm. Code 104.424(b).

Like the first hearing, participants who intend to testify at the second hearing are directed to pre-file all of their testimony and any related exhibits no later than Wednesday April 1, 2015. Participants pre-filing testimony for the second hearing are directed to serve pre-filed testimony on all persons on the Service List at the time of pre-filing. *See* 35 Ill. Adm. Code 102.424(c). Before filing pre-filed testimony or any other document with the Clerk, participants are encouraged to obtain the most recent version of the Service List through the Clerk's Office On-Line (COOL) on the Board's website (www.ipcb.state.il.us) or by contacting the Clerk's Office at 312-814-3629.

In order to expedite the second hearing and make it more efficient, participants are directed to pre-file written questions based on any testimony pre-filed for the second hearing no later than Wednesday, April 8, 2015. *See* 35 Ill. Adm. Code 104.424(b).

The "mailbox rule" (*see* 35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of any of the pre-filed testimony or pre-filed questions, and the Board's Clerk must receive these documents before 4:30 PM on the respective deadlines. However, documents may be filed electronically through COOL. *See* 35 Ill. Adm. Code 101.302(d) (prior approval of electronic filing). Any questions about electronic filing should be directed to the Clerk's Office at 312-814-3629.

Although Section 27 of the Act (415 ILCS 5/27 (2012)) does not establish the order of the first hearing or limit it to the proponent's testimony, the hearing officer intends to begin the first hearing with the Agency's presentation of its proposal. *See* 35 Ill. Adm. Code 102.428(c). After the Agency has addressed all questions from other participants, and if time permits before the conclusion of the first hearing, other participants who have pre-filed testimony may then testify and respond to questions.

All pre-filed testimony and questions for both the first and second hearings will be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief introduction or summary of pre-filed testimony will be allowed if a witness wishes to provide one before responding to questions. Participants wishing to offer a public comment during the hearings will be allowed to do so if time permits. The Board's procedural rules also include an opportunity to file post-hearing comments. *See* 35 Ill. Adm. Code 102.108(b).

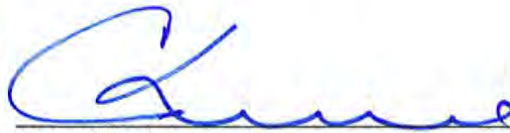
The hearing officer anticipates starting the second hearing with any participants who pre-filed testimony for the first hearing and were not able to testify and address questions at that time. Next, participants who pre-filed testimony for the second hearing will present that testimony and respond to questions. Participants who did not pre-file testimony for the second hearing will then be allowed to testify and respond to questions as time permits. As at the first hearing, all pre-filed testimony and questions will be entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief introduction or summary of pre-filed testimony will be allowed if a witness wishes to provide one before responding to questions.

Service and Notice Lists

The hearing officer will establish and maintain both a Notice List and a Service List for this proceeding. *See* 35 Ill. Adm. Code 102.422(a), (b). The Notice List includes participants who wish to receive copies only of the Board's opinions and orders and hearing officer orders. 35 Ill. Adm. Code 102.422(a). The Service List for this rulemaking is the list of persons who wish to participate actively in this proceeding and receive not only the Board's opinions and orders but also other filings such as pre-filed testimony, questions, and responses. *See* 35 Ill. Adm. Code 102.422(b).

Note that interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number R15-19. 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 website. For more information about the option of electronic notice or COOL, please consult either the Board's website at www.ipcb.state.il.us or John Therriault, the Board's Clerk, at 312-814-3629.

IT IS SO ORDERED.



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