

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
AMENDMENTS TO 35 ILL. )  
ADM. CODE SUBTITLE D: ) R18-24  
MINE RELATED WATER ) (Rulemaking - Water)  
POLLUTION )

REPORT OF THE PROCEEDINGS held in the above  
entitled cause before Hearing Officer Timothy Fox,  
called by the Illinois Pollution Control Board,  
taken by Kari Wiedenhaupt, CSR, for the State of  
Illinois, 100 West Randolph Street, Chicago,  
Illinois, on the 6th Day of December 2018,  
commencing at the hour of 9:03 a.m.

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A P P E A R A N C E S

MS. CYNTHIA SANTOS, Board Member

MS. BRENDA CARTER, Board Member

MS. ALISA LIU, Technical Unit

ALSO PRESENT:

MR. TIMOTHY FOX

MS. NATALIE WINQUIST

MS. MARIE TIPSORD

MS. STEPHANIE DIERS

MR. DARREN GROVE

MS. NANCY TIKALSKY

1 HEARING OFFICER FOX: Good morning,  
2 and welcome to this Illinois Pollution Control  
3 Board hearing. My name is Tim Fox, and with me is  
4 the other hearing officer assigned to this,  
5 Natalie Winguist. We are the assigned hearing  
6 officers for this rulemaking proceeding entitled:  
7 Amendments to 35 Illinois Administrative Code  
8 Subtitle D: Mine Related Water Pollution. And  
9 the docket number for this rulemaking is R18-24.

10 One of our board members has  
11 been unavoidably and unexpectedly detained this  
12 morning, but assures us that she should be here  
13 very shortly. What we will do is go onto the  
14 record, as I have just done, to get underway on  
15 time, but then recess briefly to allow her to  
16 appear and anyone else who may be delayed this  
17 morning. I expect to be underway within about  
18 five to ten minutes.

19 So if you would stay put there,  
20 we will come back on the record very quickly. And  
21 if we could then go off the record for a moment.

22 (Whereupon, a short break was  
23 taken.)

24 HEARING OFFICER FOX: We have just

1 recessed for a moment or two, and will resume.

2 I want to stress that present  
3 today from the Pollution Control Board are, at my  
4 right, Board Member, Cynthia Santos, who is one of  
5 the two board members assigned to this rulemaking,  
6 and at my left, is Natalie Winquist, the other  
7 hearing officer, and at her left, Alisa Liu, of  
8 the Board's Technical Unit.

9 Present in Springfield today are  
10 Board -- is Board Member, Brenda Carter, at the  
11 head of the table that's visible to us here in  
12 Chicago, who is the second -- the other board  
13 member assigned to this proceeding.

14 Taking care of some  
15 housekeeping, this hearing is governed by the  
16 Board's procedural rules, and all information that  
17 is relevant and that is not repetitious or  
18 privileged will be admitted into the record.

19 Please bear in mind that any questions that may be  
20 posed today by the Board or its staff are intended  
21 solely to help develop a clear and complete record  
22 for the Board's decision and do not reflect any  
23 pre-decision on the proposal, on the testimony,  
24 comments or other filings.

1                   The Illinois Environmental  
2 Protection Agency on January 10th of 2018, filed a  
3 rulemaking proposal under the Governor's Executive  
4 Order 16-13. That order directed state agencies  
5 to review regulations and determine those that are  
6 outdated, repetitive, confusing, unnecessary or  
7 harmful to the state's economy. And the order  
8 directed agencies to amend or repeal those  
9 regulations as necessary. IEPA on January 10th  
10 had proposed numerous changes throughout the  
11 subtitles of the Board's rules.

12                   At that time the Board had begun  
13 its own review of the same rules, and on  
14 March 22nd, 2018, the Board opened this docket,  
15 18-24, specifically to address amendments to the  
16 Subtitle D, Mine Related Water Pollution  
17 Regulations.

18                   On July 26th of 2018, the Board  
19 adopted a proposal for public comment, which  
20 requested comment both generally and on five  
21 specific matters. The Board stated that it, too,  
22 proposed non-substantive amendments to remove  
23 unnecessary language, replace outdated provisions,  
24 update statutory references and reorganize

1 provisions to clarify them.

2 Today we are, of course, holding  
3 the first hearing in this -- in this rulemaking  
4 docket. On November 2nd of 2018, the hearing  
5 officers directed participants intending to  
6 testify at this hearing to pre-file their  
7 testimony by November 29th of 2018.

8 On that date, the Board received  
9 a comment from IEPA, but IEPA did not identify a  
10 witness to testify, and I understand that the  
11 agency does not intend to testify today. No other  
12 participant had pre-filed any testimony or comment  
13 before hearing.

14 For this hearing, which is being  
15 conducted, of course, by video conference, any  
16 document intended to be offered as a hearing  
17 exhibit must have been received by the Board's  
18 clerk at least 24 hours before the scheduled start  
19 of the hearing. The Board didn't receive any  
20 hearing exhibit before that deadline. The rules  
21 do specifically allow, however, that a document  
22 that's not allowed as a hearing exhibit can be  
23 filed as a public comment. And anyone who has  
24 questions about that procedure, about those steps,

1 can certainly speak with me after we adjourn. In  
2 addition, we also have a second hearing scheduled  
3 on Thursday, December 20th of 2018.

4 What I would intend to do in  
5 terms of the order of our hearing is this. We do  
6 have one commenter representing the Attorney  
7 General's Office, who has signed in here in  
8 Chicago. It's my understanding, Member Carter,  
9 that we have not had anyone sign in in  
10 Springfield? I see you shake --

11 MS. CARTER: Correct.

12 HEARING OFFICER FOX: I see you  
13 shaking your head and saying that there is not  
14 anyone other than the three of you we can -- that  
15 other than the four of you that were identified,  
16 previously present, in Springfield.

17 What we can do is turn  
18 immediately to any comment or to any questions  
19 that -- it's pronounced, Tikalsky; is that  
20 correct?

21 MS. TIKALSKY: Correct.

22 HEARING OFFICER FOX: Correct. That  
23 Ms. Tikalsky may have on the part of the Attorney  
24 General's Office, and then see whether anyone

1 appears who wishes to offer testimony that has not  
2 pre-filed it, and before we conclude, we can see  
3 whether anyone else wishes to offer a comment.

4 Ms. Diers, if you would identify  
5 yourself for the record, please, and let us know  
6 if you have any procedural questions before we  
7 begin, that would be helpful.

8 MS. DIERS: All right. My name is  
9 Stephanie Diers, and I represent Illinois EPA  
10 today, and I don't have any procedural questions  
11 at this time.

12 The only thing I do note -- I  
13 want to note, is we did receive a comment from the  
14 Illinois Attorney General's Office this morning  
15 concerning Section 405.101. It's titled, Special  
16 Conditions: Agency Guidance Document. It was  
17 brought to our attention that we had originally  
18 proposed to strike and repeal this whole section,  
19 but after receiving their comment this morning and  
20 taking a look at this section, we need to revise  
21 what we proposed.

22 And we were -- are going to  
23 revise it by striking Agency Guidance Document in  
24 the title of 405.101, and then we want to keep



1 what is found in A, and then we would strike B  
2 through F. And I will file written comments to  
3 address what I am saying on the record today with  
4 the Board.

5 HEARING OFFICER FOX: Very good.  
6 Ms. Diers, based on our early stage in this  
7 proceeding, that could conceivably be filed at the  
8 deadline for testimony for the second hearing,  
9 which is December 13th. And at that second  
10 hearing on the 20th, we will also be setting a  
11 deadline for any post-hearing comments, and that  
12 seems to be also a possibility in terms of a  
13 deadline for filing.

14 MS. DIERS: Sure.

15 HEARING OFFICER FOX: So I  
16 appreciate your clarification of that on the  
17 record here today, and your indication of your  
18 willingness to clarify that further in writing as  
19 well. And the Board certainly appreciates that.

20 MS. DIERS: All right. Thank you.

21 HEARING OFFICER FOX: Was there  
22 anything else you wish to take up procedurally  
23 before we begin?

24 MS. DIERS: Not at this time.

1 HEARING OFFICER FOX: Very good.

2 Ms. Tikalsky, it's my  
3 understanding that you didn't wish to offer sworn  
4 testimony, but did have some questions. Is that  
5 an accurate understanding?

6 MS. TIKALSKY: Correct.

7 HEARING OFFICER FOX: We have come  
8 to the point where if you would like to raise any  
9 questions on the record, you are certainly free to  
10 do so. We have got plenty of time ahead of us.

11 MS. TIKALSKY: Okay. Yeah. And --

12 HEARING OFFICER FOX: If I may --  
13 and I'm sorry. It's rude to interrupt you right  
14 away. If you could tell us your name, spell your  
15 surname, and let us know for the record who you  
16 represent, that would be very helpful.

17 MS. TIKALSKY: Okay. Nancy  
18 Tikalsky, T as in Tom, I-K-A-L-S-K-Y, Illinois  
19 Attorney General's Office.

20 Stephanie answered one of my  
21 questions on Section 405.101, Special Conditions.  
22 And then the other question I have about that  
23 section that -- their explanation, because they  
24 don't have guidance documents. They just

1 eliminate the option for guidance documents,  
2 because it says, if there are guidance documents.

3           And I wonder if that isn't  
4 substantive, given future administrations may  
5 choose to develop guidance documents, and that's  
6 what this -- it seems more substantive. So I  
7 thought that was kind of tacked onto the question  
8 that I left for Stephanie yesterday -- late  
9 yesterday, but I am not sure, because it was by  
10 telephone, and I was just trying to get some  
11 clarification.

12           So I think that's all. That's  
13 the only other question I have.

14           MS. DIER: Okay. We will take a  
15 look at that again, because I know this -- what, I  
16 think this has been around since, what, the 70's  
17 and we have never had a special guidance document,  
18 and I don't anticipate one ever coming out, but I  
19 see where you are going with your question, if it  
20 could be in the future.

21           So we will take a look at that  
22 and get back to you at the next hearing to see if  
23 we need to tweak that language for that issue that  
24 you raise.

1 HEARING OFFICER FOX: And I  
2 certainly don't mean to direct either of the two  
3 of you to do so, but if it's profitable off the  
4 record after hearing to continue a discussion with  
5 one another to formulate a response that meets --  
6 responds to the specific terms of your question,  
7 Ms. Tikalsky, my suspicion is that Ms. Diers would  
8 be perfectly happy to do that.

9 MS. DIER: Sure. Thank you.

10 MS. TIKALSKY: Okay. Thank you.

11 HEARING OFFICER FOX: Ms. Tikalsky,  
12 any further questions, or any comment you wish to  
13 offer?

14 MS. TIKALSKY: No. That's all.

15 HEARING OFFICER FOX: Very good. We  
16 will give you another chance to change your mind,  
17 if you would like to do that.

18 I am assuming, am I correct,  
19 Member Carter, that no other person has appeared  
20 in Springfield to offer comment or offer  
21 testimony?

22 MS. CARTER: You are correct.

23 HEARING OFFICER FOX: Very good.

24 Why don't we -- since it is just 9:15, why don't

1 we go off the record for about five minutes, just  
2 so that anyone else who may be delayed a short  
3 time will be able to appear before we finally  
4 adjourn. Does that make sense; Member Carter,  
5 Member Santos?

6 MS. CARTER: That's fine.

7 HEARING OFFICER FOX: Very good. If  
8 the court reporter would take us off the record,  
9 we will come back at 9:20, and if no one has  
10 appeared, we should be ready to adjourn.

11 (Whereupon, a short break was  
12 taken.)

13 HEARING OFFICER FOX: Thank you  
14 everyone for your patience. We did want to go off  
15 the record to allow anyone who was delayed in  
16 arriving at this hearing a chance to get here.

17 Member Carter, I am assuming  
18 that no additional person has appeared there in  
19 Springfield?

20 MS. CARTER: That is correct.

21 HEARING OFFICER FOX: Ms. Tikalsky,  
22 we did want to offer you a final chance to offer  
23 any comment or ask any questions before we  
24 adjourned.

1 MS. TIKALSKY: I think the comment  
2 that a 9:00 a.m. hearing is early, given the  
3 winter months and the train schedules. I could  
4 have gotten on a train last week at 5:30 and not  
5 made it here until 10:30, so -- or 9:30.

6 So just something you may want  
7 to consider. 10:00 a.m. was the last hearing. So  
8 that's it. We would appreciate you to give a  
9 little extra time. I can take early trains, but  
10 5:30 is the earliest train I could take.

11 HEARING OFFICER FOX: We appreciate  
12 that. It places some of the same burdens on us as  
13 board members and staff as well. So we will take  
14 your -- we will certainly consider that input.

15 Anything, Member Carter, Member  
16 Santos that you wanted to add to the record?

17 (No response.)

18 HEARING OFFICER FOX: Very good.  
19 Well, why don't we prepare to adjourn with a  
20 couple of final announcements.

21 Our second hearing, as I  
22 mentioned, is scheduled for Thursday,  
23 December 20th at 9:00 a.m., by video conference  
24 between the Board's Chicago and Springfield

1 offices, with a deadline of December 13th, 2018,  
2 to pre-file testimony. For this video hearing on  
3 the 20th, any document, as I mentioned before,  
4 that a participant wishes to introduce as a  
5 hearing exhibit, must be received by the Board's  
6 Clerk's Office at least 24 hours before the  
7 scheduled start of the hearing, of course, on the  
8 morning of December 19th. We do expect copies of  
9 the transcript of today's hearing to be available  
10 no later than December 13th, and, of course, as  
11 soon as the Board receives that, we will place it  
12 on the Clerk's Office online where it can be  
13 viewed, downloaded and printed.

14 Ms. Diers, I wonder if we could  
15 ask you one quick favor. Although the gentleman  
16 with you has, of course, not offered a comment or  
17 any testimony, would you mind -- would you object  
18 to just identifying him for the record so that we  
19 will know who he is if he appears in a later  
20 comment or transcript?

21 MS. DIERS: It's Darren Grove. He  
22 is with our Permit Section here in Springfield.

23 HEARING OFFICER FOX: Very good.

24 Thank you, Ms. Diers. I appreciate that.

1                   Are there any other matters that  
2 the Agency or our board members need to address  
3 before we adjourn this hearing?

4                   MS. SANTOS: Can I just --  
5 Ms. Tikalsky, are you planning on coming to the  
6 second hearing?

7                   MS. TIKALSKY: Yes.

8                   MS. SANTOS: It is possible to  
9 adjust the time at this point?

10                  HEARING OFFICER FOX: Because we  
11 provided notice of the specific time, and we are  
12 within the 20-day -- 21-day period, I'm afraid we  
13 couldn't re-notice it and hold it as scheduled.

14                   So I apologize that we can't  
15 account for your comment in a hearing that's  
16 coming up that quickly, but certainly we will bear  
17 that in mind in the future, Ms. Tikalsky.

18                   MS. SANTOS: Thank you, Tim.

19                   HEARING OFFICER FOX: Anything else?

20                   (No response.)

21                   HEARING OFFICER FOX: Then we are  
22 adjourned. Thank you very much for your  
23 participation, everyone.

24                   (END OF PROCEEDINGS.)



1 I, KARI WIEDENHAUPT, do hereby certify that  
2 the foregoing was reported by stenographic and  
3 mechanical means, which matter was held on the  
4 date, and at the time and place set out on the  
5 title page hereof and that the foregoing  
6 constitutes a true and accurate transcript of  
7 same.

8 I further certify that I am not related to  
9 any of the parties, nor am I an employee of or  
10 related to any of the attorneys representing the  
11 parties, and I have no financial interest in the  
12 outcome of this matter.

13 I have hereunder subscribed my hand on the  
14 \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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KARI WIEDENHAUPT, CSR

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<hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>10:00</b> 14:7  <b>10:30</b> 14:5  <b>100</b> 1:13  <b>10th</b> 5:2,9  <b>13th</b> 9:9 15:1,10  <b>16-13</b> 5:4  <b>18-24</b> 5:15  <b>19th</b> 15:8</p>
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<hr/> <b>2</b> <hr/> <b>20-day</b> 16:12 <b>2018</b> 1:14 5:2,14,18 6:4,7 7:3 15:1 17:14 <b>20th</b> 7:3 9:10 14:23 15:3 <b>21-day</b> 16:12 <b>22nd</b> 5:14 <b>24</b> 6:18 15:6 <b>26th</b> 5:18 <b>29th</b> 6:7 <b>2nd</b> 6:4 <hr/> <b>3</b> <hr/> <b>35</b> 1:5 3:7 <hr/> <b>4</b> <hr/> <b>405.101</b> 8:15,24 10:21 <hr/> <b>5</b> <hr/> <b>5:30</b> 14:4,10 <hr/> <b>6</b> <hr/> <b>6th</b> 1:14 <hr/> <b>7</b> <hr/> <b>70's</b> 11:16 <hr/> <b>8</b> <hr/> <b>9</b> <hr/> <b>9:00</b> 14:2,23 <b>9:03</b> 1:15 <b>9:15</b> 12:24 <b>9:20</b> 13:9 <b>9:30</b> 14:5				
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