

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 IN THE MATTER OF:

4

5 AMENDMENTS TO DIESEL OPACITY

6 RULES REQUIRED BY P.A. 91-254 R01-008

7 AND P.A. 91-865: AMENDMENTS TO (Rulemaking - Air)

8 35 ILL. ADM. CODE 240

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11 Proceedings held on October 4th, 2000, at 11:00 a.m., at
12 the Illinois Pollution Control Board, 600 South Second Street,
13 Suite 402, Springfield, Illinois, before Stacy L. Meyers, Hearing
14 Officer.

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17 Reported by: Beverly S. Hopkins, CSR

18 CSR License No.: 084-004316

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A P P E A R A N C E S

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Board Members present:

Chairman Claire A. Manning

Board Member Samuel T. Lawton, Jr.

Board Member Nicholas J. Melas

Alisa Liu, Environmental Scientist

Andrew Boron, Atty. Assistant

Hearing Officer Stacy L. Meyers

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P R O C E E D I N G S

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(October 4th, 2000, 11:00 a.m.)

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HEARING OFFICER MEYERS: Good morning. This is a hearing
4 being conducted by the Illinois Pollution Control Board. My name
5 is Stacy Meyers and I'm the hearing officer in this proceeding
6 which is entitled in the Matter of Diesel Opacity Rules,
7 Amendments to the 35 Illinois Administrative Code 240, Docket
8 Number R01-8. I would like to introduce to you members of the
9 Board that are here this morning. To my immediate right is
10 Ms. Claire Manning, Chairman of the Board.

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CHAIRMAN MANNING: Welcome.

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HEARING OFFICER MEYERS: Immediately to my left is
14 Mr. Samuel T. Lawton Jr. who is the board member assigned to this
15 case.

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BOARD MEMBER LAWTON: Morning.

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HEARING OFFICER MEYERS: To his left is Ms. Alisa Liu. She
19 is the environmental scientist for the Board who is assigned to
20 this matter.

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MS. LIU: Good morning.

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HEARING OFFICER MEYERS: And to my far right is Mr. Andrew
24 Boron and is he attorney assistant to Ms. Claire Manning.

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MR. BORON: Morning.

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HEARING OFFICER MEYERS: For the record today's date is
28 October 4th, 2000, and it is approximately 11 o'clock in the

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1 morning. This is the first of two -- this is the first of two
2 presently scheduled hearings for receipt of testimony and
3 questions concerning the Board's September 7th, 2000, proposal to
4 amend its existing diesel opacity regulations as required by
5 legislative mandate. The second hearing will be held later this
6 month on October 24th, 2000, at the State of Illinois Building in
7 Chicago. The hearings will be governed by the Board's procedural
8 rules for regulatory proceedings. This means that all
9 information which is relevant and not repetitious or privileged
10 will be admitted in accordance with 35 Illinois Administrative
11 Code 102.282. All witnesses will be sworn and subject to
12 cross-examining.

13 The Illinois General Assembly passed Public Act 91-254 in
14 1999. That law which amends the Illinois Vehicle Code requires
15 the Board to amend it's existing diesel smoke opacity rules
16 within eight months of the legislation's effective date of July
17 1st, 2000. The Board passed the proposed first notice, opinion
18 and order for this matter on September 7th, 2000. Copies of the
19 order are located in the side of the room. The opinion and order
20 are also available on the Board's web site. For more information
21 on the next hearing, please feel free to take a copy of the
22 hearing officer order also dated September 7th, 2000, on the side
23 of the room. You may also review information regarding this

24 proceeding on our web site. Our URL address is

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1 www.ipcb.state.il.us.

2 The usual order of a regulatory hearing is that the
3 proponent of a proposed regulation present testimony concerning
4 its proposal. The General Assembly did not specify anyone other
5 than the Board to be the proponent of amendments to the existing
6 diesel opacity regulations. The Board's explanation of this
7 proposal is found in September 7th, 2000, first notice, opinion
8 and order. I will briefly summarize the proposed amendments.
9 Afterwards, Ms. Alisa Liu, an environmental scientist with the
10 Illinois Pollution Control Board, will be available to answer any
11 questions you may have regarding the proposed regulations. After
12 questions, the proponents are complete.

13 The Board typically hears testimony from persons who have
14 pre-filed testimony with the Board. As no one has done so we
15 will hear testimony by people who have signed up today. I will
16 proceed by calling people in the order that they have registered
17 to testify. If you wish to present testimony, please sign in on
18 the sheet located on the table on the side of the room. At this
19 time I would like to give Madam Chairman Claire Manning the
20 opportunity to make any additional remarks.

21 CHAIRMAN MANNING: I would just like to say welcome. The
22 Board has had diesel opacity regulations for some time, would
23 have been lacking really is the sort of enforcementability of the

24 administration of the diesel opacity regulations with the advent

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1 of Public Act 91-254. The Illinois Department of Transportation
2 will now be able to enforce and administer the Board's diesel
3 opacity standard so it's a welcome legislative change that allows
4 the Illinois Department of Transportation actually enforce and
5 administer these rules and welcome the opportunity to update them
6 to the point necessary so that they're technically and
7 scientifically adequate for today's proceeding. Thank you.

8 HEARING OFFICER MEYERS: Thank you, Madam Chairman. At
9 this time I will summarize the regulations as we have proposed in
10 our first notice, opinion and order. It is the purpose of
11 today's hearing to discuss the Board's proposed amendments to
12 their smoke diesel opacity regulations. Since the Illinois
13 General Assembly in Public Act 91-254 directed the Board to act
14 as proponent in this matter to revise its existing diesel opacity
15 rules, I will now summarize the changes as presented in our first
16 notice, opinion and order. Again copies of the first notice,
17 opinion and order are found in the side of the room. The Board's
18 existing diesel opacity standards are codified at 35 Illinois
19 Administrative Code 240. They were adopted in Board Docket
20 R90-20 on February 27th, 1992. The rules were filed with the
21 Secretary of State and became effective on April 7th, 1992. The
22 required changes, the smoke diesel opacity regulations, fall

23 under three categories. First, the incorporation of new smoke
24 test opacity procedures; second, a temporary relaxation of smoke

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1 opacity standards for diesel-powered heavy duty vehicles from
2 1973 and earlier; and third, the deletion of provisions regarding
3 adjusted standard in 92-4 which relaxed the general 55 percent
4 opacity standard to 85 percent for Detroit Diesel Corporation, or
5 DDC, 1987 to 1990 series 60 engines.

6 First, the Illinois General Assembly specifically directs
7 the Board in Public Act 91-254 to revise its emissions standards
8 and procedures to be consistent with the society of automotive
9 engineers, or SAE, recommended practice J1667 snap-acceleration
10 smoke test procedure for heavy duty diesel-powered vehicles. It
11 also directs the Board to revise emissions standards and
12 procedures to be consistent with United States EPA or
13 Environmental Protection Agency's guidance to states on smoke
14 opacity cutpoints to be used with the SAE J1667 in smoke test
15 procedure. The Board incorporates these documents as referenced
16 in their first notice, opinion and order dated September 7th of
17 2000. I am marking and entering the SAE report on the J1667 test
18 as referenced above and into evidence as Exhibit 1. I am also
19 marking and entering into evidence two United States EPA guidance
20 documents concerning the SAE J1667 test procedure dated April
21 3rd, 1997, and February 25th, 1999, as Exhibits 2 and 3
22 respectively. Finally, I am marking and entering into evidence

23 as Exhibit 4 a report by the SAE to the United States EPA
24 regarding the cooperative effort in the establishment of smoke

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1 opacity cutpoints for the SAE J1667 test procedure. These
2 documents are always available for public inspection and copying
3 at the clerk's -- of the office of the clerk of the Board as
4 required by the administrative procedures act. These documents
5 can also be found on the world wide web.

6 The legislation also states that the Board must add a new
7 diesel smoke opacity standard of 70 percent for 1973 and earlier
8 models of diesel-powered heavy duty vehicles until the year of
9 January 1st, 2003. After January 1st of that year, these older
10 vehicles will be subject to the generally applicable smoke
11 opacity standard of 55 percent. This 70 percent standard is less
12 stringent than the 55 percent limit recommended by the United
13 States EPA for the same model year heavy duty diesel-powered
14 vehicles. In the Board's original diesel opacity rulemaking
15 R90-20, Detroit Diesel Corporation, or DDC, commented that 1987
16 to 1990 series 60 engines could not reasonably meet the 55
17 percent opacity standard using the Board's snap-idle test and
18 that the engines emit very low levels of smoke under most other
19 operating conditions. The Board therefore adopted Section
20 240.141(d) to set forth a level of justification required for
21 such engines to qualify for an adjusted standard from the 55

22 percent opacity standard of Subsection 82. DDC in turn
23 petitioned for an adjusted standard pursuant to Subsection D.
24 DDC demonstrated that complying with 55 diesel opacity standard

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1 using the snap-idle test on the DDC 1987 to 1990 series 60
2 engines was unreasonable. On May 20th, 1993, in the adjusted
3 standard 92-4, the Board granted the adjusted standard relaxing
4 the 55 percent opacity standard to 85 percent for all the engines
5 in question. The 85 percent opacity standard was premised upon
6 studies of the engine when evaluated using the snap-idle test.
7 Since the Board based Subsection D on potential difficulties for
8 these engines with a test that is now being replaced, the Board
9 proposes to delete the subsection. The Board specifically
10 solicits comments on this proposed deletion although old
11 snap-idle tests and new snap-acceleration tests are similar, the
12 procedures do contain some differences. The Board questions
13 whether DDC engines would have the same problems with the
14 snap-acceleration test and if so whether 85 percent would be the
15 appropriate smoke opacity standard for these engines using the
16 new test.

17 It should be noted that the General Assembly in Public Act
18 91-865 also instructed the Illinois Department of Transportation
19 to adopt regulations under 92 Illinois Administrative Code 460
20 regarding the implementation of diesel emissions inspection
21 programs. IDOT gave notice of their proposed rules in Volume 24,

22 Issue 28 of the Illinois Register on July 7th, 2000. IDOT has
23 not yet adopted these rules. If you have any questions regarding
24 IDOT and the proposed regulations, please contact them directly.

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1 Before we have the opportunity to ask questions of Ms. Liu,
2 the environmental scientist with the Illinois Pollution Control
3 Board, I would like to address two procedural matters. The first
4 is regarding service and notice list. Copies of the current
5 notice and service lists are also available at the side of the
6 room. If you find that your name does not appear on these lists,
7 there are sign-up sheets for the notice and service lists in the
8 back -- in side of the room as well. Please sign up if you wish
9 to be included on either list. Individuals on the notice list
10 receive only Board and hearing officer opinion and orders.
11 Individuals on this service list receive copies of all documents
12 filed by all persons on the service list including pre-filed
13 testimony and questions, motions, appearances as well as Board's
14 and the hearing officers' opinions and orders. If your name is
15 on the service list and you file documents with the Board, you
16 must also serve everyone on the service list with copies of those
17 same documents. If you have any questions about the list, please
18 feel free to see me during the break or after the hearing.

19 The second procedural matter that we need to discuss is
20 regarding to decorum. Anyone who testifies will be sworn in by

21 the court reporter. Anyone may ask questions of anyone who
22 testifies. However that I ask you to please raise your hand,
23 wait for me to acknowledge you and after I have acknowledged you,
24 please state your name and who you represent before you begin

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1 asking questions. Please speak one at a time. If you are
2 speaking over each other the court reporter will not be able to
3 get your questions on record. When answering your questions,
4 please sure to say -- please be sure to say yes or no instead of
5 nodding or shaking your head. We will now at this time proceed
6 with questions for Alisa Liu who is the environmental scientist
7 available today for the Board. Ms. Liu will address any
8 technical questions concerning the Board's first notice, opinion
9 and order on the diesel opacity regulations. If Ms. Liu cannot
10 immediately address concerns raised during this hearing, a member
11 of the Board's technical staff will also be present at the
12 upcoming hearing on October 24th, 2000. If you could please,
13 swear Ms. Liu in.

14 (At this point in time the court reporter swore in
15 Ms. Alisa Liu.)

16 HEARING OFFICER MEYERS: Are there any questions for
17 Ms. Liu at this time? With no questions for Ms. Liu, we will now
18 open the floor to public testimony. We will proceed in the order
19 that people have signed up to testify in today's hearing. Has
20 anyone signed up on the list today to speak? Is there anyone

21 here today who would like to give testimony regarding the diesel
22 opacity regulations? At this time I'm going to request, if no
23 objections, that we recess for approximately 30 minutes but stay
24 convenient in case someone from the public arrives late who has

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1 any questions to ask or would like to present testimony. All
2 right. It is now 11:17. We will reconvene in half an hour or at
3 11:45 to be precise. I must note that we will be starting
4 promptly at 11:45 with any questions or testimony that we may
5 have. Thank you.

6 (A 30-minute break was taken.)

7 HEARING OFFICER MEYERS: Welcome back. Do we have any of
8 the audience at this time who would like to testify in front of
9 the Board regarding diesel opacity rules being proposed in 35
10 Administrative Code 240? At this time I'm going to have the
11 record reflect that a member of the agency, the Illinois
12 Environmental Protection Agency, has been present for these
13 proceedings in accordance with the administrative procedures act.
14 I would also like to solicit any testimony or information
15 regarding the cost of the implementation of the snap-acceleration
16 test as proposed to be adopted in the Board's first opinion and
17 order dated September 7th, 2000, by either of the truckers'
18 associations, transportation associations or anyone else who
19 feels they have relevant information on this matter. The record

20 in this matter will close at a minimum of 14 days after the
21 transcript is received in the Board's office. The Board
22 anticipates it will go to second notice on November 16th, 2000.
23 The expedited date is due to our eight month deadline that is
24 mandated by the Illinois General Assembly. Are there any other

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1 matters which need to be addressed at this time? If any persons
2 would like a copy of the transcript from today's hearing, you can
3 speak to the court reporter directly. You may also contact the
4 Board's clerk's office in Chicago for a hard copy at 75 cents per
5 page or download the hearing from the Board's web site. The
6 second hearing in this matter will be held on October 24th, 2000,
7 at 10 o'clock a.m. in the morning at the State of Illinois
8 Building located at 160 North LaSalle Street in Room N, as in
9 Nancy, 505, in Chicago. Pre-file testimony for that hearing must
10 be filed with the Board by October 17th, 2000, at 4:30 p.m. Due
11 to the time constraints placed on the Board by the Illinois
12 General Assembly, no additional hearings will be held after
13 October 24th, 2000, regarding R01-8. At this time I request that
14 this hearing be closed. Adjourned.

15 (At this point in time the hearing was adjourned.)

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STATE OF ILLINOIS

COUNTY OF ST. CLAIR

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, and CSR, do certify that on October 4th, 2000, at the Illinois Pollution Control Board, Hearing Room 403, 600 South Second Street, Springfield, Illinois, the foregoing proceeding was taken down in shorthand by me and afterwards transcribed upon the computer.

I DO HEREBY FURTHER CERTIFY that the foregoing is a true and correct transcript of said proceeding.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on this 5th day of October 2000.

Beverly S. Hopkins
CSR - #084-004316

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