

ILLINOIS POLLUTION CONTROL BOARD  
May 20, 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 second hearing in this “fast-track” rulemaking proceeding took place as scheduled on Wednesday, May 18, 2011, in Chicago, and the Board received the transcript (Tr.2) later that day. The Board posted the entire transcript to the Clerk’s Office On-Line (COOL), which is accessible through the Board’s Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)).

In an order dated March 17, 2011, the hearing officer scheduled a third hearing beginning on Wednesday, June 1, 2011, in Chicago and required the pre-filing of testimony for that hearing on or before Friday, May 20, 2011. *See* Public Act 96-0308, eff. Aug. 11, 2009 (P.A. 96-0308) (re-enacting repealed Section 28.5 and requiring pre-filing at least 10 days before hearing).

Section 28.5(f)(3) of the Environmental Protection Act (Act), provides that

[t]he third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to the [Illinois Environmental Protection] Agency response to the material submitted at the second hearing and to any response by other parties. The third hearing *shall be cancelled* if the Agency indicates to the Board that it does not intend to introduce any additional material. P.A. 96-0308 (emphasis added).

During the second hearing, counsel for the Agency indicated that it did not at that time wish to address the issue of the third hearing. Tr.2 at 28. However, counsel agreed that, by Friday, May 20, 2011, the Agency would either pre-file testimony for the third hearing according to the original deadline or file a request to cancel the hearing. *See id.* at 29.

On Thursday, May 19, 2011, the Agency filed a request (Req.) “that the Illinois Pollution Control Board cancel the hearing currently scheduled to take place on June 1, 2011, in this matter.” Req. at 1. The Agency stated that it “does not wish to introduce additional materials at such hearing, and believes that outstanding issues can be resolved through post-hearing comments.” *Id.*; *see* P.A. 96-0308 (Section 28.5(f)(3)). Accordingly, the third hearing in this proceeding is cancelled.

Also on May 19, 2011, the Agency filed a motion to correct the transcript of the second hearing, which the Board will address in a later order.

Section 28.5(k) of the Act provides that, “[f]ollowing the hearings, the Board must close the record 14 days after the availability of the transcript.” P.A. 96-0308. With the cancellation of the third hearing, the hearings in this proceeding concluded on Wednesday, May 18, 2011, and the Board received the transcript of the final hearing later that day.

The statutory 14-day comment period began Wednesday, May 18, 2011, and will close Wednesday, June 1, 2011. The “mailbox rule” (35 Ill. Adm. Code 101.300(b)(2)) does not apply to the filing of these post-hearing comments, and the Board’s Clerk must receive any post-hearing comments before the close of business on Wednesday, June 1, 2011. Although comments 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 June 1, 2011. Questions about electronic filing should be directed to the Clerk’s Office at 312-814-3629.

IT IS SO ORDERED



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