

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
REGISTRATION OF SMALLER)
SOURCES, ROSS, NEW ILL.)
ADM. CODE 201-175)

R12-10
(Rulemaking-
Air

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OCT 27 2011

STATE OF ILLINOIS
Pollution Control Board

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer Tim
Fox, called by the Illinois Pollution Control
Board, taken by Steven Brickey, CSR, for the State
of Illinois, 100 West Randolph Street, Chicago,
Illinois, on the 27th day of October, 2011,
commencing at the hour of 1:00 p.m.

A P P E A R A N C E S

MR. TIMOTHY FOX, Hearing Officer
MR. ANAND RAO, Senior Environmental Scientist
MS. JENNIFER BURKE
MS. CARRIE ZALEWSKI

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
1021 North Grand Avenue East
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Springfield, Illinois 62794-9276
(217) 782-5544

BY: MS. RACHEL L. DOCTORS
MR. EDWIN C. BAKOWSKI
MR. JAMES R. ROSS

ALSO PRESENT: MR. PETER DWORAKOWSKI

REPORTED BY:

Steven J. Brickey, CSR
CSR License No. 084-004675

1 MR. FOX: Good afternoon and welcome
2 to this Illinois Pollution Control Board hearing.
3 My name is Tim Fox and I am the Hearing Officer
4 for this rulemaking proceeding which is entitled
5 In The Matter of Registration of Smaller Sources,
6 the acronym ROSS, R-O-S-S, new 35 Ill. Adm. Code
7 201.175.

8 The Board docket number for this
9 rulemaking is R12-10. I want to note, first of
10 all, for the record that present today from the
11 Board are at my far left Board Member Jennifer A.
12 Burke and at my immediate right Board Member
13 Carrie Zalewski and also joining us today from the
14 Board at my immediate left is Anand Rao of the
15 Board's technical unit.

16 The Illinois Environmental
17 Protection Agency filed this rulemaking with the
18 Board on August 15th, 2011, and in an order dated
19 August 18th, 2011, the Board accepted the Agency's
20 proposal for hearing and directed its clerk to
21 publish the proposal for public comment. That
22 proposal appeared in the Illinois Register on
23 September 2nd, 2011, at 35 Illinois Register page
24 14616.

1 Also, on August 18th, 2011, the
2 Hearing Officer scheduled two hearings. The first
3 of which took place on October 5th, 2011, in
4 Springfield and we are today, of course, holding
5 the second hearing. The Hearing Officer set in an
6 order set a deadline of October 13th, 2011, to
7 pre-file testimony for this hearing. However, no
8 participant has pre-filed testimony for it. I do
9 want to note that if any participant wishes to
10 testify today there is a signup sheet that is
11 located at what is effectively the witness table
12 immediately adjacent to Ms. Doctors who is here on
13 behalf of the Agency. I would note that anyone
14 who wishes to testify would be sworn in and may be
15 asked questions about the substance of that
16 testimony.

17 I can clearly see that no one
18 has indicated on that sheet that they wish to
19 testify and we can look again at that before we
20 adjourn this hearing. Since the Board did not
21 receive pre-filed testimony, we would begin this
22 hearing with the testimony by participants who did
23 not pre-file it, but wish to testify. That would
24 then be followed by questions that others may

1 have. I do want to note for the record that the
2 Board did on October 13th, 2011, receive a comment
3 from the Graphic Arts Coalition that on October
4 14th, 2011, the Board received post hearing
5 comments by the Illinois Association of Aggregate
6 Producers and that on Monday, October 24th the
7 Board received post first hearing comments filed
8 by the Agency.

9 The Agency has, I believe,
10 indicated that its witnesses are available here
11 today to be sworn and to respond to questions and
12 in discussing before the hearing procedural issues
13 of our order of hearing we will proceed to have
14 them sworn so that they can field questions either
15 that the Board and its staff or that anyone else
16 may have. Particularly, but by no means
17 exclusively based on that post first hearing
18 comment that was filed on October 24th. As time
19 then permits, any participant may offer public
20 comment for the record of this hearing.

21 Very generally, I want to note
22 this proceeding is governed by the Board's
23 procedural rules so that all information that is
24 relevant and is not repetitious or privileged will

1 be admitted into the record. I do want to
2 emphasize that any questions posed today by the
3 Board or by its staff are intended solely to
4 clarify and help develop the record and do not
5 reflect prejudgment or predetermination on the
6 issues presented in the proposal.

7 I think we will have no
8 difficulty with making ourselves heard, but please
9 try to speak as clearly as possible for the
10 benefit of our court reporter. Procedurally, are
11 there any questions before we begin?

12 Neither seeing nor hearing any,
13 Ms. Doctors, on behalf of the Agency we have
14 noted, of course, that there is no one who has
15 pre-filed testimony or who otherwise wishes to
16 testify. Can we turn it over to the Agency to
17 swear in your witnesses and to begin with
18 questions of those questions?

19 MS. DOCTORS: Yes. Before we begin,
20 I was just going to enter in what would be Hearing
21 Exhibit 5 containing the list of possibly affected
22 sources that the Board requested that we file at
23 the first hearing.

24 MR. FOX: Very good. I'll construe

1 that, Ms. Doctors, to admit as Exhibit No. 5 the
2 DVD that you have referred to containing the
3 information you have described. Is there any
4 opposition/objection to the motion to admit that
5 as Hearing Exhibit No. 5? Neither seeing nor
6 hearing any, it will be marked and admitted into
7 the record as Exhibit No. 5.

8 (Document marked as ILPCB
9 Exhibit No. 5 for
10 identification.)

11 MR. FOX: Ms. Doctors, thank you for
12 your efforts and your cooperation in securing that
13 for the Board's record. It is definitely
14 appreciated. Any other preliminary matters before
15 we go to the Agency's witnesses?

16 MS. DOCTORS: No, but I'd like to
17 ask that -- actually, before we swear in the
18 witnesses, let's see what the questions are and
19 whether we need to swear them in.

20 MR. FOX: My preference would be to
21 swear them in and have them answer to the best of
22 their ability under our circumstances today.

23 MS. DOCTORS: Okay. We'll have
24 Mr. Ross and Mr. Bakowski sworn in.

1 MR. FOX: Very good. If the court
2 reporter would do so, please.

3 WHEREUPON:

4 EDWIN BAKOWSKI and JAMES ROSS
5 called as a witness herein, having been first duly
6 sworn, deposeth and saith as follows:

7 MR. FOX: Thanks very much. I have
8 approximately eight questions, Ms. Doctors, for
9 the Agency's witnesses. Would it be your wish
10 that I pose it generally and have either of the
11 gentlemen or both as is appropriate to respond to
12 the question?

13 MS. DOCTORS: Yes.

14 MR. FOX: Very good. Let me begin
15 at page two of its post hearing comments. The
16 Agency proposes to add a subsection B1B providing
17 that, quote, if the projected admissions for any
18 12 consecutive months within the next 60-month
19 period will exceed the emission criteria pursuant
20 to subsection A1 of this section, then the source
21 is not required to enter or reenter ROSS. Can you
22 explain the specific basis for proposing a
23 60-month period in this language?

24 MR. ROSS: Yes. The 60-month period

1 was chosen because it allows the company to look
2 forward at their operations over a period of time
3 and if they're going to exceed the amount of the
4 criteria to enter the ROSS, then they wouldn't
5 need to. Now, we looked at other time intervals,
6 years into the future that they would look, and we
7 tried to find some precedent that had previously
8 been set and what we found was under the US EPA's
9 PSD program they have a five year look back period
10 to determine whether a source has made a
11 significant modification and under non-attainment
12 new source review they also use a five year period
13 to look at operations. So that was some level of
14 historic precedent that was set for any look at
15 period so that's why it was selected.

16 MR. FOX: Very good.

17 MR. RAO: Mr. Ross, also, most of
18 your interval cycles are five year cycles?

19 MR. ROSS: That's true.

20 MR. FOX: Let me turn to a second
21 question, if I may. At page two, again, of the
22 post first hearing comments, the Agency proposes a
23 new subsection, G4, which refers to a source that
24 is, quote, new, not previously operated, close

1 quote. Do those terms new and not previously
2 operated have different meanings or does that
3 language just refer to sources that are relying
4 exclusively on projected admissions for their
5 initial registration under subsection B1?

6 MR. ROSS: Well, those would, in
7 fact, be new sources that have no historic
8 operational data and don't currently have a permit
9 from the Agency. So they would be relying on
10 projected emissions only because as it says they
11 hadn't previously operated.

12 MR. FOX: To a third question then.
13 At pages two and three, carrying forward to page
14 three of its post first hearing comment, the
15 Agency referred to development of online
16 registration functions. You've indicated clearly
17 that this development is under way and that it is
18 not entirely within the control of the
19 Environmental Protection Agency, but does the IEPA
20 have even any rough estimate of the time at which
21 smaller sources may be able to perform all or some
22 of these registration functions online?

23 MR. ROSS: Well, I believe our
24 position is as soon as possible. As soon as we're

1 able to get the resources committed to allow this
2 to occur, that is to allow sources to file their
3 registration online, pay their registration fee
4 online, check the status of their registration
5 application online, we have already started some
6 of those discussions. One of the things I'd like
7 to refer to is that under the legislation we're
8 allowed a two year period for us to bring other
9 online aspects, permit information and get it all
10 up and running and available to regulated sources
11 and public and whoever else may want to refer to
12 the online information.

13 MR. FOX: And I'm assuming that by
14 the legislation you referred to, you are
15 mentioning Public Act 97-95?

16 MR. ROSS: Yes.

17 MR. FOX: Very good. Moving along.
18 I want to refer to the public comment number two
19 which was filed by the Association of Aggregate
20 Producers. They have proposed Subsection G4,
21 which addresses sources generally speaking that
22 had obtained a life time operating permit or a
23 lifetime general operating permit, then registered
24 under ROSS and then became ineligible for ROSS,

1 for the registration of smaller sources. Does the
2 Agency have a position on this specific language
3 that has been proposed at Subsection G4?

4 MS. DOCTORS: The Agency is
5 currently in discussions and in development with
6 people who have filed this comment and we will be
7 filing a post hearing comment in response.

8 MR. FOX: Very good. And,
9 Ms. Doctors, we will, of course, before we adjourn
10 the hearing today work out a deadline for the
11 filing of those and we look forward to hearing the
12 Agency's position on that proposed language. So I
13 appreciate your clarifying that for us.

14 My next question refers to the
15 public comment filed by the Graphic Arts Coalition
16 which the Board has docketed as public comment
17 number one. The Coalition has also proposed a
18 Subsection G4 addressing some of the same sources
19 that I briefly described in my previous questions
20 and I'll repeat the same question. Does the
21 Agency have a position on the specific language
22 proposed for in Subsection G4 by the Graphic Arts
23 Coalition?

24 MS. DOCTORS: The Agency will be

1 filing a post hearing comment once we've finished
2 our discussions to adequately address. We
3 understand what the issue is that's been raised by
4 the parties and what the concern is.

5 MR. FOX: Very good. My next
6 question refers to the same comment by the Graphic
7 Arts Coalition which proposed on page three of its
8 comment to increase the two year -- two calendar
9 year admission's threshold and I'll ask once again
10 if the Agency has a response to or a position on
11 that increase?

12 MS. DOCTORS: We will address that
13 in our post hearing comments.

14 MR. FOX: Very good. Thank you,
15 Ms. Doctors. My next question also addresses the
16 comment by the Graphic Arts Coalition. They have
17 proposed that there should be no fee associated
18 with the ROSS program. Let me ask directly. Is
19 it the Agency's position that Section 9.14(c) of
20 the Environmental Protection Act requires the
21 Agency to assess an annual fee of \$235 under the
22 ROSS program?

23 MS. DOCTORS: Yes, it is the
24 Agency's position that a fee is required under the

1 legislation.

2 MR. FOX: Am I correct, Ms. Doctors,
3 that that fee is specifically established at a
4 level of \$235 under 9.14(c)?

5 MS. DOCTORS: Mr. Ross?

6 MR. ROSS: Yes, it is.

7 MR. FOX: Very good. Thank you.
8 And my final question for now, Ms. Doctors, for
9 the Agency's witnesses that, again, turning to the
10 Graphic Arts Coalition comment, they had proposed
11 on page four that there should be what they
12 described as a grace period of at least one year
13 during which a source may register without
14 penalty. Does the Agency have a reaction to or a
15 position on that proposal?

16 MS. DOCTORS: Would you like --
17 should we address that in post hearing comment?

18 MR. ROSS: Yes.

19 MS. DOCTORS: Our preference is --
20 penalties are particular in there's statutory
21 requirements on whether penalties are assessed and
22 under what circumstances we could grant a grace or
23 not grant a grace and that would be addressed in
24 the comments.

1 MR. FOX: Very good. As I
2 mentioned, that does for now, Ms. Doctors, take
3 care of the questions that I had least had for the
4 Agency. I certainly want to acknowledge that we
5 have registered your very clear response that
6 there are some issues that the Agency will need to
7 address in a post hearing comment and understand
8 the basis upon which you wish to do that. I do
9 want very frankly for the record to stress this
10 that the Board has under Section 9.14(d) a 120 day
11 adoption deadline. That adoption deadline
12 requires the Board to adopt a final order to adopt
13 rules no later than December 13th. However, the
14 last regularly scheduled Board meeting before that
15 deadline is on Thursday, December 1st and that is
16 a very short amount of time for the Board to field
17 comments and to prepare a final order. So I urge
18 you with all speed that you can muster to address
19 that so we're able to have a complete record as
20 quickly as possible to make a decision on the
21 adoption as we're required to under the act.

22 MS. DOCTORS: Yes.

23 MR. FOX: Thank you very much. I
24 certainly want to make sure that the Board's staff

1 and the Board members, of course, have an
2 opportunity to ask questions and Mr. Rao plainly
3 would like to pose one.

4 MR. RAO: I have just one question
5 regarding the proposed language in the Section
6 201175(c)1. This provision requires the name,
7 address and telephone number of the source and of
8 the person responsible for submitting and
9 retaining copies of registration. I just want to
10 know if the rule allows anyone other than the
11 owner or operator to submit a registration
12 application? I was reading the rule and most of
13 the other provisions you put owner or operator --

14 MS. DOCTORS: Is your question --

15 MR. RAO: Should that be owner or
16 operator?

17 MS. DOCTORS: -- whether or not the
18 owner or operator could have a designee submitting
19 their registration?

20 MR. RAO: Yes, that's my question.
21 If not, should the address and the telephone
22 number be of the owner or operator?

23 MS. DOCTORS: Mr. Bakowski will
24 answer.

1 MR. BAKOWSKI: I believe the intent
2 here is to go with the owner or operator or his
3 designee. So the designee would be suitable as
4 well.

5 MR. RAO: Because if you look at
6 Subsection D in the same section it says the owner
7 or operator of a registered source shall submit
8 registration as required by C. So I'm not clear
9 if that designee is allowed or not.

10 MR. ROSS: Okay.

11 MR. RAO: Okay.

12 MR. FOX: The Board and its staff
13 have exhausted the questions it has for the Agency
14 and its witnesses. Mr. Dworakowski, you had been
15 present throughout and we had earlier offered you
16 a chance to revisit your intention just to
17 monitor. Did you have any questions you wish to
18 ask today, sir?

19 MR. DWORAKOWSKI: No.

20 MR. FOX: Why don't we in order to
21 take care of a quick procedural issue or two go
22 off the record for just a moment and we can resume
23 very quickly.

24

1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 MR. FOX: In going off the record,
5 the participants did discuss briefly procedural
6 issues. Let me start, first of all, by noting
7 that under Section 27(b) of the Environmental
8 Protection Act the Board is required to request
9 that the Department of Commerce and Economic
10 Opportunity, or DCEO, study the economic impact of
11 proposed rules.

12 However, Section 9.14(d) of the
13 act states that this Section 27(b) does not apply
14 to rules adopted by the Board to implement the
15 ROSS program. Consequently, the Board has not
16 requested and does not intend to acknowledge a
17 request that DCEO conduct an Economic Impact Study
18 of this proposal.

19 I would also note that Section
20 9.14(d) also provides that the rulemaking
21 provisions of the Administrative Procedure Act do
22 not apply to the rules adopted by the Board to
23 implement ROSS. So the Board will not be
24 submitting a second notice proposal to the Joint

1 Committee on Administrative Rules for its review
2 as it customarily would do and instead the Board
3 will be adopting rules on or before the 120 day
4 deadline established in Section 9.14(d).

5 Continuing then, Section
6 102108(b) of the Board's procedural rules provides
7 that, quote, any person may submit written
8 comments on any proposal within 14 days after the
9 receipt of the hearing transcript in the Board's
10 offices unless otherwise specified by the Hearing
11 Officer or the Board.

12 Copies of this transcript are
13 expected to be available on an expedited basis to
14 the Board by Monday, October 31st, 2011, and once
15 it is filed the Board will post that transcript to
16 its website under this Docket No. 12-10. In going
17 off the record to discuss procedural issues, the
18 participants did discuss the filing of post
19 hearing comments before it takes action on the
20 Agency's proposal in this docket.

21 The Board will hold open a post
22 hearing comment period to Tuesday, November 15th,
23 2011. I would ask that that mailbox rule at
24 Section 101300(b)2 of the rules not apply to the

1 comments. So that the clerk's office must receive
2 them before the close of business on that deadline
3 by 4:30 p.m. on Tuesday, November 14th. Those, of
4 course, can be filed electronically which ought to
5 mitigate the effects of operating outside of the
6 mailbox rule.

7 Once the Board receives that
8 transcript, I will issue a Hearing Officer order
9 setting that comment deadline on Tuesday, November
10 15th so that all of the participants are aware of
11 when those will be due so the Board can proceed to
12 meet its deadline for adoption.

13 Those comments also may be filed
14 electronically as I have mentioned and questions
15 about those procedures can certainly be directed
16 to the Board's clerk. If anyone in the meantime
17 has questions about procedural aspects, my contact
18 information is listed on the Board's website. No
19 other hearings, of course, are now scheduled in
20 this rulemaking. Ms. Doctors, is there anything
21 else we need to turn to before we adjourn?

22 MS. DOCTORS: The Agency would just
23 like to note it will be filing post hearing
24 comments. There are issues that we need to

1 address from this hearing from the comments and
2 from other discussions that have been occurring.

3 MR. FOX: Great. Certainly, some of
4 those will be in response to Board questions. We
5 appreciate your work on those and look forward to
6 hearing from the Agency, Ms. Doctors.

7 Is there anything further?
8 Neither seeing nor hearing any indication that
9 there is, I certainly want to thank the witnesses
10 from the Agency, our participants for being here
11 today and we are adjourned. Thanks very much.

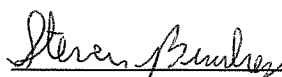
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
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5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this 27th day of
15 October, A.D., 2011.

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