

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
REVISION OF ENHANCED VEHICLE)	R12-12
EMISSIONS INSPECTION AND)	
MAINTENANCE (I/M) REGULATIONS.)	(Rulemaking-
AMENDMENTS TO 35 ILL. ADM. CODE)	Air
PART 240)	

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Daniel Robertson, 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 17th day of November, 2011, commencing at the hour of 9:00 a.m.

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 Pollution Control Board

A P P E A R A N C E S

MR. DANIEL ROBERTSON, Hearing Officer
MR. ANAND RAO
MS. DEANNA GLOSSER
MS. CARRIE ZALEWSKI
MR. THOMAS JOHNSON
MR. G. TANNER GIRARD
MS. JENNIFER BURKE

ALSO PRESENT: MR. KENT MOHR
MR. STEPHEN THORPE
MR. MICHAEL HILLS

REPORTED BY:

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

1 MR. ROBERTSON: Good morning, all.
2 My name is Daniel Robertson and I have been
3 appointed by the Board to serve as Hearing Officer
4 in this proceeding entitled In The Matter Of:
5 Revision of Enhanced Vehicle Emission Inspection
6 and Maintenance (I/M) Regulations. Amendments to
7 35 Ill. Adm. Code Part 240 listed as R12-12 in the
8 Board's docket.

9 With me today is the presiding
10 board member Jennifer Burke and next to her we
11 have member Deanna Glosser and then on my left
12 from our Board's technical unit we have Anand Rao
13 and next to him we have member Carrie Zalewski and
14 member Tom Johnson. We are also joined by the
15 Board Executive Director Dr. G. Tanner Girard.

16 This rulemaking was filed partly
17 pursuant to Section 13C-20A of the Vehicle
18 Emissions Inspection Law of 2005. It is also
19 stated as the VEIL of 2005. Because that section
20 requires the Board to adopt rules within 120 days
21 of receiving the Agency's proposal, the Board
22 submitted this proposal to publication in the
23 Illinois Register as a proposal for public comment
24 without commenting on the substantive merits.

1 This publication appeared in the Illinois Register
2 on October 28th, 2011. Furthermore and in Section
3 13C020A of the VEIL of 2005 Section 27(b) of the
4 Environmental Protection Act and the rulemaking
5 provisions of the Administrative Procedure Act, or
6 APA, do not apply. Accordingly, the Board has not
7 and will not request that the Department of
8 Commerce and Economic Opportunity conduct an
9 economic impact study of this proposal. The Board
10 also will not submit the proposal to first or
11 second notice pursuant to Section 5-40 of the APA.
12 The Board is, however, conducting two public
13 hearings to solicit comments on the proposal. So
14 the purpose of today's hearing is to hear
15 testimony from the proponent, the Illinois
16 Environmental Protection Agency.

17 On November 2nd, 2011, the
18 Agency filed the pre-filed testimony of Michael
19 Hills and his testimony has been made publicly
20 available on the Board's website. No added
21 testimony has been filed. Unless there is any
22 objection, all testimony will be taken as if read
23 and we will begin with questions immediately.
24 Please note that any question asked by a Board

1 member or staff are intended to help build a
2 complete record of the Board's decision and not to
3 express any preconceived notion or bias.

4 Before we get to testimony,
5 would any members of the Board or Board staff like
6 to make any opening statement? Seeing none, at
7 this point, would the Agency like to introduce
8 itself and its witnesses for the record?

9 MR. MOHR: Yes. Thank you, Hearing
10 Officer Robertson. My name is Kent Mohr. I'm an
11 attorney for the Illinois EPA. The Illinois EPA
12 has filed this rulemaking simply to implement
13 Public Act 97-106 to the Vehicle Emissions
14 Inspection Law of 2005, which will be effective
15 February 1st, 2012.

16 That amendment to the VEIL of
17 2005 repealed the steady state and evaporative
18 system integrity tests. It also exempted the
19 vehicles in general that receive that test.
20 Furthermore, it adopted a new visual inspection
21 test to use for a very small portion of the
22 vehicles that would have received the steady state
23 idle test. Those vehicles being ones that for
24 their design or some sort of communication

1 software issue cannot receive an OBD test. As I
2 mentioned, this Public Act is effective February
3 1st, 2012. Therefore, the Illinois EPA's
4 rulemaking proposes to repeal the steady state and
5 evaporative system integrity test as of February
6 1st. So they will be effective only through
7 January 31st.

8 Any visual inspection test will
9 take over February 1st, 2012. I have with me
10 today two witnesses. To my immediate right, and
11 your left, is Stephen Thorpe, manager of the
12 compliance assurance section at the division of
13 mobile source programs at the Illinois EPA and to
14 Steve's right is Michael Hills with the technical
15 services section in the division of mobile source
16 programs at the Illinois EPA.

17 We have pre-filed testimony in
18 this rulemaking as noted earlier entitled
19 Testimony of Michael Hills. We have not pre-filed
20 testimony for Mr. Thorpe, but he is here today to
21 assist and answer any questions as necessary. At
22 this time, I'd like to have Mr. Hills and
23 Mr. Thorpe sworn in and then be available to
24 answer any questions that may be asked of them.

1 WHEREUPON:

2 STEPHEN THORP and MICHAEL HILLS
3 called as witnesses herein, having been first duly
4 sworn, deposeth and saith as follows:

5 MR. MOHR: That's all we have.

6 MR. ROBERTSON: Thank you. Good
7 morning, Mr. Hills and Mr. Thorpe. Mr. Hills, is
8 this a true and accurate copy of your pre-filed
9 testimony?

10 MR. HILLS: Yes, it is.

11 MR. ROBERTSON: Are there any
12 objections to admitting this testimony as if read?
13 Seeing none, at this point, I will enter the
14 testimony of Michael Hills as Exhibit 1 to this
15 proceeding.

16 (Document marked as IL PCB
17 Exhibit No. 1 for
18 identification.)

19 MR. ROBERTSON: Since I do not see
20 any members of the public present, we will move
21 towards the Board's questions. We have a few
22 items that we would like to address based on a
23 communication with the Joint Committee on
24 Administrative Rules, or JCAR, and I will be going

1 over these items one at a time in case the Agency
2 wishes to comment on any of them now.

3 Firstly, JCAR has asked one
4 question regarding this rulemaking and 35 Ill.
5 Adm. Code Part 276, which is entitled Procedures
6 to be Followed in the Performance of the
7 Inspections of Motor Vehicle Emissions. JCAR
8 would like to know does the Agency plan to
9 coordinate the adoption of this rulemaking and the
10 amendments to Part 276 so that they take effect at
11 the same time?

12 MR. MOHR: Yes, we are. In fact,
13 we've already filed that rulemaking as JCAR is
14 aware. There will be a hearing this afternoon in
15 that matter, the first hearing in that matter.
16 The second hearing in that matter will be on the
17 same date that the Board will have its second
18 hearing in this matter.

19 So as best we can, that will be
20 taking effect on the same day as close as we can
21 get it to them. That's about the best that we can
22 do, but they were filed very, very close in time
23 and they should be adopted very close in time.

24 MR. ROBERTSON: Thank you. So the

1 other JCAR questions relate specifically to the
2 language. So I'll be listing the line number and
3 section as I go over them. These line numbers are
4 based on the published language, not the original
5 proposed language.

6 First, at line 103, which is at
7 the end of the index just after the source
8 paragraph, there is -- there is a Board note that
9 states Board Note: This part implements the
10 Environmental Protection Act as of July 1st, 1994.
11 JCAR asks if this July 1st, 1994, date is still
12 appropriate? Does the Agency have any comments on
13 that?

14 MR. MOHR: My only comment on that
15 would be that it's implementing the Environmental
16 Protection Act as of July 1st, 1994, and onward.
17 I don't see any reason to change that. If JCAR
18 believes they should change it, or they would like
19 it changed, then I would ask they propose what
20 date that should read, but I don't see any issue
21 with it from a legal standpoint.

22 MR. ROBERTSON: Thank you. At line
23 153, this is the -- in the definition section at
24 the definition for gross vehicle weight rating. A

1 portion that states "gross vehicle weight rating
2 (GVWR)" JCAR suggests changing this to "gross
3 vehicle weight grading" or "GVWR". So basically
4 placing an or between the two parenthesis.

5 MR. MOHR: I don't have an objection
6 to that. That would be consistent with what they
7 proposed in Part 276.

8 MR. ROBERTSON: Thank you. At line
9 198, this is the definition beginning with motor
10 vehicle. JCAR suggests adding a comma after the
11 closing quotations following the term "Motor
12 vehicle". Any comments?

13 MR. MOHR: Can you state that again,
14 please?

15 MR. ROBERTSON: Sure. In the motor
16 vehicle definition immediately following the
17 quotation of motor vehicle, JCAR would like to put
18 a comma after that.

19 MR. MOHR: I don't have any
20 objection to that.

21 MR. ROBERTSON: So then at line 248,
22 this is Section 240.105A. Penalties. The
23 sentence beginning I quote. Any violations of
24 Section 240.103, et cetera, JCAR suggests changing

1 the word sections to section and making that
2 singular. Any comments?

3 MR. MOHR: I don't have any
4 objection to that.

5 MR. ROBERTSON: Then again at line
6 252, there's Section 240.105B. Similar change
7 there with any violations of sections. Again,
8 changing the word sections to section.

9 MR. MOHR: I don't have any
10 objection to that either.

11 MR. ROBERTSON: Lastly, at line 300
12 which is in the new Section 240.201.
13 Applicability. In the second sentence stating the
14 standards of this subpart apply to those vehicles
15 tested pursuant to Subsection 13C-25H, et cetera.
16 JCAR suggests changing the word subsection to
17 section with the S capitalized. Any comments?

18 MR. MOHR: I don't have any
19 objection to that.

20 MR. ROBERTSON: Thank you. That
21 covers all of JCAR's comments. Lastly, we did
22 want to note that the Board did make one change
23 before publishing the proposal. At line 225, this
24 is the definition for vehicle inspection tests

1 which is a new item being added. In the initial
2 proposal, the language said "Visual inspection
3 test" means a visual examination of a vehicle's
4 MIL, et cetera. The Board changed this language
5 to "Visual inspection test" means a visual
6 examination of a vehicle's malfunction indicator
7 lamp (MIL), et cetera. Any comments?

8 MR. MOHR: No. I have no objection
9 to that.

10 MR. ROBERTSON: At this point,
11 any -- do any members of the Board or Board staff
12 have any questions based on JCAR's comments or the
13 Board's comments?

14 MR. RAO: I just have one.

15 MR. ROBERTSON: Go ahead.

16 MR. RAO: This is not related to
17 JCAR's questions. In your proposal regarding the
18 visual inspection tests, it is stated that the
19 Agency would make a determination as to which
20 vehicles are eligible for the visual inspection
21 test and there is a list of these vehicles. Has
22 the Agency developed a list of vehicles that fall
23 under this category?

24 MR. HILLS: Yes, we have.

1 Currently, there's three vehicles on this list
2 that we've encountered over the years of testing
3 that due to the initial configuration of the
4 vehicle when it was sold by the manufacturer it
5 didn't meet the specifications required by the US
6 EPA to communicate with the generic scan tool
7 which is what we use. So, basically, US EPA
8 didn't actually certify the vehicle correctly. At
9 that point, the only way to correct the issue
10 would be US EPA would have to require the
11 manufacturer or the manufacturer would have to
12 voluntarily issue a recall to correct the issue.

13 At this point, we haven't seen
14 any progress on this. So we've -- that left the
15 owner of the vehicle with no outs. So we
16 developed this list and that allows them to get
17 the fall back test because there's no way to fix
18 the problem without US EPA and the manufacturer
19 recalling the issue.

20 MR. RAO: So there's only three
21 models?

22 MR. HILLS: Yes. I'm sure we'll
23 encounter more as we get new model years coming
24 into the system, but it's a '97 Acura and two 2006

1 model year Mercedes are the only ones that are on
2 there.

3 MR. RAO: Thank you very much. I
4 was just curious because I thought there was some
5 federal requirements that they have to have the
6 OBD accessible.

7 MR. HILLS: They do, but some
8 vehicles slip through.

9 MR. RAO: Thanks.

10 MR. ROBERTSON: Are there any other
11 questions for the Agency at this time? Very well.
12 Seeing none, Mr. Mohr, Mr. Thorpe, Mr. Hills,
13 thank you very much for your time this morning.

14 At this point, is there anyone
15 else who would like to testify on any other matter
16 in this proceeding? Seeing none, pursuant to the
17 Board's October 6th, 2011, Hearing Officer order
18 the next hearing in this matter is scheduled for
19 Wednesday, November 30th, 2011, at 9:00 a.m. in
20 Room 145 of the Madison County Administration
21 Building located at 157 North Main Street in
22 Edwardsville, Illinois. Any pre-filed testimony
23 is due by November 28th, 2011, and the mailbox
24 rule does not apply meaning that the Board must

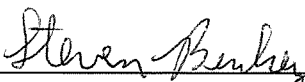
1 have any filings in its possession by that date.
2 I'd like to thank you all again for your time in
3 attending this matter today and, with that, this
4 hearing is adjourned.
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
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5 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 21st day of
15 November, A.D., 2010.

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