

ORIGINAL

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BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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SEP - 9 2014

IN THE MATTER OF:)
)
STANDARDS AND REQUIREMENTS FOR)
POTABLE WATER SUPPLY WELL)
SURVEYS AND FOR COMMUNITY)
RELATIONS ACTIVITIES PERFORMED)
IN CONJUNCTION WITH AGENCY)
NOTICES OF THREATS FROM)
CONTAMINATION: PROPOSED)
AMENDMENTS TO 35 ILL. ADM. CODE)
1600)

STATE OF ILLINOIS
Pollution Control Board
DOCKET R14-23

Hearing held, pursuant to notice, on Thursday,
September 4, 2014, at the hour of 1:00 p.m. at 1021
N. Grand Avenue East, Springfield, Illinois, before
TIMOTHY J. FOX, duly appointed Hearing Officer.

L.A. REPORTING SERVICE
(312) 419-9292

REPORTER: LAUREL A. PATKES, CSR #084-001340

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BOARD MEMBERS:

DEANNA GLOSSER, Ph.D.
JEROME D. O'LEARY

APPEARANCES:

JAMES JENNINGS
Assistant Counsel
IEPA

EPA STAFF PRESENT:

BRAD FROST
HEATHER NIFONG
JOYCE MUNIE
TRACEY HURLEY

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PROCEEDINGS

HEARING OFFICER FOX: Good

afternoon, everyone, and welcome to this Illinois
Pollution Control Board hearing.

My name is Tim Fox, and I'm
the hearing officer for this rulemaking which is
entitled Standards and requirements for potable
water supply well surveys and for community
relations activities performed in conjunction with
Agency notices of threats from contamination:
Proposed amendments to 35 Illinois Administrative
Code 1600.

The Board docket for this
rulemaking is R14-23.

I want to introduce from the
Board two persons who are present with us today. At
my right is board member Jerry O'Leary who is the
lead board member for this rulemaking, and at my
left is, of course, the Board's chairman, Dr. Deanna
Glosser.

As background, the Illinois
Environmental Protection Agency filed this
rulemaking proposal with the Board on June 17th of
2014, and the Board accepted the proposal for

1 hearing in an order on July 24th of 2014.

2 This is, of course, the first
3 hearing in this rulemaking. We will be hearing
4 testimony by the Agency and questions based on the
5 Agency's proposal and testimony.

6 There will also be an
7 opportunity to offer testimony on the Board's
8 request that the Department of Commerce and Economic
9 Opportunity perform an economic impact study of the
10 proposal.

11 In an order dated July 24,
12 2014, the hearing officer directed participants,
13 including the Agency, to prefile testimony for this
14 hearing on or before Thursday, August 21st of 2014,
15 and on that date, the Board did receive prefiled
16 testimony by Mr. Frost on behalf of the Agency's
17 proposal. No other prefiled testimony was submitted
18 to the Board for this hearing.

19 In its statement of reasons
20 that it filed with its proposed amendments, the
21 Agency indicated that Agency employees would be able
22 and available to answer questions today, and we have
23 here with us Mr. Frost, Ms. Heather Nifong,
24 Ms. Joyce Munie, and Ms. Tracey Hurley, and at a

1 point very quickly, we will be able to introduce
2 them for the record and swear them in for any
3 questions that may come up.

4 The July 24th hearing officer
5 order also directed participants to prefile written
6 questions based on prefiled testimony no later than
7 August 28th, and on that date, a Board hearing
8 officer order included in an attachment Board
9 questions that were based on the Agency's testimony.
10 No other participant has prefiled any questions for
11 the Agency here today.

12 This prefiled testimony and
13 the prefiled questions have been posted to the
14 clerk's office online, or COOL, under this docket
15 number R14-23.

16 We will begin naturally with
17 the prefiled testimony that the Agency submitted.

18 Under Section 104.424(f) of
19 the Board's procedural rules, this prefiled
20 testimony will be entered into the record as if
21 read.

22 If the Agency wishes to begin
23 with a brief introduction or summary, it may
24 certainly do so to begin a presentation.

1 We will then turn to the
2 Board's prefiled questions for the Agency's witness
3 that, as I mentioned, were submitted with that
4 August 28th hearing officer order.

5 After we wrap those questions
6 up, we can see whether there is anyone who did not
7 prefile testimony but who would like to testify here
8 today and also see whether there is anyone who has
9 appeared who would like to offer a public comment of
10 the Agency's proposal.

11 Any questions about our order
12 of proceeding today?

13 Neither seeing nor hearing
14 any, I just want to remind you quickly that this
15 proceeding is governed by the Board's procedural
16 rules so that all information that is relevant and
17 that is not repetitious or privileged will be
18 admitted into the record.

19 Please note the questions
20 posed today by the board members or staff are
21 intended only to assist in developing a clear and
22 complete record for the Board's subsequent decisions
23 and do not reflect any predetermination or
24 prejudgment on the issues raised in the proposal.

1 For the court reporter today,
2 I think we will without any microphones be able to
3 hear one another very clearly, but if you would
4 please avoid speaking at the same time as any other
5 person, I think we will have the clearest possible
6 transcript for everyone to review.

7 Any questions then before we
8 begin?

9 Neither seeing nor hearing
10 any, it looks like we're ready to turn to the
11 Agency.

12 Mr. Jennings, if you would
13 take a moment, please, to introduce yourself and the
14 Agency's witnesses for the record at hearing, we can
15 swear them in and begin.

16 MR. JENNINGS: Sounds good.

17 Good afternoon. My name is
18 James Jennings. I'm assistant counsel with Illinois
19 EPA, and I have with me four witnesses from the
20 Agency. I'll let them introduce themselves.

21 MR. FROST: I'm Brad Frost. I'm
22 acting manager for the Office of Community Relations
23 here at the Agency.

24 MS. NIFONG: Hi. I'm Heather

1 Nifong. I'm the acting manager for the Division of
2 Remediation Management in the Bureau of Land for
3 Illinois EPA.

4 MS. HURLEY: Tracey Hurley. I'm a
5 toxicologist with the Toxicity Assessment Unit at
6 the Illinois EPA.

7 MS. MUNIE: I'm Joyce Munie. I
8 manage the Remediation Management Section in the
9 Bureau of Land.

10 HEARING OFFICER FOX: And those are
11 all of the Agency witnesses, correct, Mr. Jennings?

12 MR. JENNINGS: Correct.

13 HEARING OFFICER FOX: If the court
14 reporter is ready, why don't we have the four of
15 them be sworn in so that we can turn to any
16 questions that are in the record.

17 (Whereupon the witnesses were
18 sworn by the reporter.)

19 HEARING OFFICER FOX: Very good.

20 Mr. Jennings, first of all, do
21 you have any documents or other materials that you'd
22 like to enter into the record as hearing exhibits?

23 MR. JENNINGS: Yes, we have two
24 items.

1 HEARING OFFICER FOX: Why don't I
2 have you start with the one you prefer to begin
3 with.

4 MR. JENNINGS: All right; the first
5 of which is a copy of Mr. Frost's prefiled
6 testimony.

7 HEARING OFFICER FOX: Very good.

8 (Whereupon Mr. Jennings is
9 distributing documents.)

10 HEARING OFFICER FOX: Mr. Jennings,
11 I'll construe, I've forgotten whether you did move,
12 but I'll construe your distribution of these
13 materials as a motion to admit Mr. Frost's prefiled
14 testimony as Exhibit No. 1 in this proceeding.

15 Is there any objection or
16 response to that motion?

17 Neither seeing nor hearing
18 any, it is marked as Exhibit No. 1, Mr. Jennings,
19 and is admitted into the record as such.

20 Thank you very much.

21 (Whereupon Exhibit 1 was admitted
22 into evidence at this time.)

23 MR. JENNINGS: And the second item
24 we'd like to move into the record are written

1 responses that the Agency has prepared to the
2 Board's prefiled questions from August 28, 2014.

3 HEARING OFFICER FOX: Once again,
4 Mr. Jennings, I'll construe your distribution of
5 that document, the Agency's responses to the Board's
6 August 28, 2014 prefiled questions, as a motion to
7 admit it, of course, as Exhibit No. 2 in this
8 proceeding.

9 Is there any response or
10 objection to the motion?

11 Neither seeing nor hearing
12 any, it is marked as Exhibit No. 2, Mr. Jennings,
13 and is admitted into the record as such.

14 (Whereupon Exhibit 2 was admitted
15 into evidence at this time.)

16 HEARING OFFICER FOX: What I'd like
17 to propose is this.

18 This is the first chance the
19 Board has had to see the written responses, which we
20 do appreciate. I do note that they've been
21 distributed to the other participants who are
22 present here.

23 Why don't we go off the record
24 just for a moment or two so that we can review those

1 written answers, and in the event that we have any
2 follow-up questions, we could go back on the record
3 and turn very quickly to those.

4 Is that acceptable with the
5 Agency?

6 MR. JENNINGS: Yes.

7 HEARING OFFICER FOX: Very good.

8 Thanks.

9 If we could go off the record
10 for a moment.

11 (Whereupon an off-the-record
12 discussion transpired at this
13 time.)

14 HEARING OFFICER FOX: Thank you all
15 for your patience while we were going off the
16 record.

17 Again, the Agency had prepared
18 written responses to the questions that the Board
19 had submitted in the hearing officer order on
20 August 28th, and we have least conducted a
21 preliminary review of those, Mr. Jennings, and the
22 board itself does not have any follow-up questions.

23 I would like to indicate
24 though that the Board's technical staff is not

1 present today, and there is some possibility that we
2 may have some follow-up questions for the second
3 hearing in October, but for our purposes of this
4 first hearing we appreciate those written responses
5 and have no follow-up.

6 Is there any other participant
7 present that had follow-up questions based on the
8 written responses submitted by the Agency today?

9 Neither seeing nor hearing
10 any, I think we can move along very quickly.

11 I did place at the door
12 sign-in sheets for persons who did not prefile but
13 may wish to testify today and separate sign-in
14 sheets for people who may wish to offer public
15 comment.

16 I can tell by the reaction of
17 our public information officer, Connie Newman, that
18 those sheets remain blank and that no one has
19 indicated that they wish either to testify or to
20 comment on the Agency's proposal.

21 What we can do then is move on
22 for a quick moment to address the issue of an
23 economic impact statement.

24 Section 27(b) of the

1 Environmental Protection Act provides that the Board
2 must request that the Department of Commerce and
3 Economic Opportunity conduct an economic impact
4 study of proposed rules before the Board adopts
5 them.

6 The Board then must make
7 either an economic impact study or the Department's
8 explanation for not conducting one available to the
9 public at least 20 days before a public hearing.

10 In a letter dated August 4,
11 2014, the Board's chairman, Dr. Glosser, did request
12 that DCEO conduct an economic impact study of this
13 proposal. The Board did specifically request a
14 response no later than September 19, 2014, a date
15 which has, of course, not yet passed, but the Board
16 has not yet to date received any response from DCEO
17 to this request.

18 Is there anyone who would like
19 to testify regarding the Board's request for that
20 study?

21 Neither seeing nor hearing
22 any, we can move on quickly to adjourn with a couple
23 of quick announcements.

24 The second hearing in this

1 docket has been scheduled to take place on Thursday,
2 October 16th of 2014, with a deadline of Thursday,
3 October 2nd of 2014 to prefile any testimony and a
4 deadline of Thursday, October 9th to prefile
5 questions based upon that testimony.

6 The mailbox rule does not
7 apply to these filings but they may be filed
8 electronically through COOL. Filings with the
9 board, whether paper or electronic, must also be
10 served on the hearing officer and all those persons
11 who appear on the service list.

12 Before filing, please check
13 either with COOL or with the clerk to ensure that
14 you have the most recent version of the service
15 list, and I know that the clerk would be happy to
16 answer any questions that might arise with regard to
17 that list or more generally about electronic
18 filings.

19 In addition, any person may
20 file written public comments in this rulemaking with
21 the clerk of the Board.

22 The copies of the transcript
23 of today's hearing are expected to be available no
24 later than eight working days from today or Tuesday,

1 September 16th of 2014, and very soon after the
2 Board receives that transcript, it will be posting
3 that to COOL from which you can view and print it
4 out.

5 If anyone has questions about
6 procedural aspects of this rulemaking, contact
7 information for the hearing officer and other Board
8 staff is on the Board's web page.

9 Are there any other matters
10 that need to be addressed before we adjourn?

11 Neither seeing nor hearing any
12 indication that there is, we are adjourned, and
13 thank you for everyone's role in making this a very
14 expeditious hearing.

15 Thanks very much.

16 (Which were all of the
17 proceedings held at this time.)
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF SANGAMON)

3
4 CERTIFICATE

5 I, Laurel A. Patkes, Certified Shorthand
6 Reporter in and for said County and State, do hereby
7 certify that I reported in shorthand the foregoing
8 proceedings and that the foregoing is a true and
9 correct transcript of my shorthand notes so taken as
10 aforesaid.

11 I further certify that I am in no way
12 associated with or related to any of the parties or
13 attorneys involved herein, nor am I financially
14 interested in this action.

15 Dated September 8, 2014.

16
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18 _____
19 Certified Shorthand Reporter
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