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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
June 9, 2010

IN THE MATTER OF:)
)
10-YEAR FEDERALLY ENFORCEABLE) R 10-21
STATE OPERATING PERMITS (FESOP):) (Rulemaking - Air)
AMENDMENTS TO 35 ILL. ADM. CODE)
201.162)

NOTICE OF HEARING

DATES, TIMES, PLACES:

Thursday, July 8, 2010 at 12:00 noon

Wednesday, July 21, 2010 at 1:00 p.m.

JAMES R. THOMPSON CENTER
Room 11-512
100 W. Randolph—Room 11-512
Chicago, IL 60601

IEPA OFFICE BUILDING
Room 1244N, First Floor
1021 N. Grand Avenue East
Springfield, IL 62794

PURPOSE OF HEARING:

Merit and economic

ATTENDING BOARD MEMBER:

Carrie Zalewski

HEARING OFFICER:

Kathleen M. Crowley

HEARING OFFICER ORDER

Procedural History

On April 20, 2010, the Illinois Environmental Protection Agency (Agency or IEPA) filed a proposal for amendments to the Board's air rules pursuant to the general rulemakings provisions of Section 27 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/27 (2008) and the Board's procedural rules at 35 Ill. Adm. Code 102.

In the Statement of Reasons (SR) accompanying the proposal, the Agency stated that this proposal would extend from five years to ten years the maximum term that the Agency could issue a Federally Enforceable State Operating Permit (FESOP). SR at 1-2. The sole provision of the air rules to be amended is Section 201.162, codified at 35 Ill. Adm. Code 201.162.

In a May 6, 2010 order, the Board accepted the proposal for hearing. The Board also authorized publication of the proposal (without comment on the proposal's merits) in the *Illinois*

Register as required by the Illinois Administrative Procedure Act (IAPA), 5 ILCS 100 *et seq.* (2008).

The Hearings

The Board will conduct two hearings in order to allow the proponent and any other interested participants the opportunity to present testimony on the merits and economic impact of the rulemaking proposal. At hearing, all persons who testify will be sworn in and subject to questioning..

As indicated above in the notice of hearings, the first hearing will begin on Thursday, July 8, 2010 and will continue until the day's business is completed, but in no event later than 5:00 p.m. The second hearing is scheduled to begin Wednesday, July 21, 2010 and will continue until the day's business is completed, but in no event later than 4:30 p.m. However, the rule proponent expects that these will be short hearings, and potential participants are advised to arrive in timely fashion.

Pre-Filing Deadlines

Participants who intend to testify must pre-file their testimony and serve the testimony on the hearing officer and all persons on the Service List. Before filing pre-filed testimony or any other document with the Clerk, please check for the most recent version of the Service List with the hearing officer or the Clerk's Office.

Participants in the first hearing are directed to pre-file all of their testimony and any related exhibits no later than Friday, June 25, 2010. Under Section 27 of the Act (415 ILCS 5/27 (2006)), the first hearing is not limited to the testimony of the proponent. But, the hearing officer presently intends to allow the Agency as proponent to present the testimony of all of its witnesses before hearing the testimony of other participants. Therefore, any other person wishing to testify at the first hearing should also pre-file their by June 25, 2010. Participants wishing to testify at the second hearing are directed to pre-file all of their testimony and any related exhibits no later than Friday, July 16, 2010.

The "mailbox rule" at 35 Ill. Adm. Code 101.300(b)(2) does not apply to the filing of this pre-filed testimony, and the Board's Clerk must therefore receive these documents before the close of business on the specified dates. However, pre-filed testimony and other documents maybe filed electronically though the Clerk's Office On-Line (COOL) from the Board's Web site at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Order of Hearings

All pre-filed testimony will be, entered into the record as if read. *See* 35 Ill. Adm. Code 102.424(f). A brief summary of testimony will be allowed if a witness wishes to provide one before responding to questions. Participants who do not pre-file testimony will be allowed to testify as time permits only after the conclusion of pre-filed testimony and questions based upon

it. Similarly, any participant who wishes to offer a public comment will be allowed to do so as time permits at the close of pre-filed testimony and the questions based upon it. Consequently, any person wishing to testify at either of the two hearings is urged to pre-file their testimony in order to ensure that they have an opportunity to testify. In addition, the Board's procedural rules provide that "[t]he Board will accept written comments from any person concerning the proposed regulations during the first notice period." 35 Ill. Adm. Code 102.604.

The hearing scheduled to begin on June 18, 2009, will begin with the Agency's presentation of its case as the proponent. After the Agency has answered all questions from other participants, and if time permits before the conclusion of the first hearing, other persons who have pre-filed may testify. The Board has reserved sufficient time for each hearing and anticipates that any person who wishes to testify will have an opportunity for testimony and any cross-examination. In the event that any person who pre-files testimony for the first hearing cannot testify on July 8, 2009, because time does not allow it, that person will be given priority to testify on July 21, 2009.

The July 21, 2009 hearing will begin with any testimony from any participant who pre-filed testimony for the first hearing and who was not able to testify at that time. Participants who pre-filed testimony for the second hearing will then present that testimony. Any participant who wishes to offer a public comment at either hearing will be allowed to do so if time permits at the close of pre-filed testimony and the questions based upon it. Again, written public comments may be submitted to the Board. *See* 35 Ill. Adm. Code 102.604.

Finally, the hearing officer, upon agreement of the participants or upon motion to the hearing officer, may change the order of testimony at these hearings. *See* 35 Ill. Adm. Code 102.420, citing 35 Ill. Adm. Code 101.Subpart F.

Service and Notice Lists

The Board will establish a notice list and a service list for this proceeding. Persons wishing to be added to either list may contact the Clerk's Office or the hearing officer.

All persons on the notice list will receive notice of Board opinions and orders and hearing officer orders. 35 Ill. Adm. Code 102.422(a).

Under Section 102.422(b) of the Board's procedural rules,

[t]he hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list. 35 Ill. Adm. Code 102.422(b).

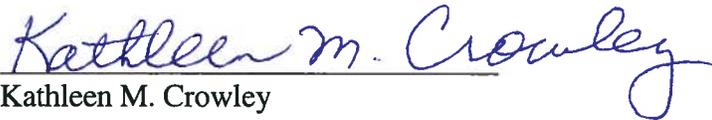
In addition to receiving notice of all Board actions and hearing officer orders, persons on the service list will receive pre-filed testimony and other filings in this proceeding.

The service list is intended for persons such as those who will testify and participate actively in this rulemaking. Persons on the Service List for this rulemaking receive not only the Board's opinions and orders but also other filings such as pre-filed testimony and public comments. But, persons on the service list are also required to serve copies of the filings they make on other persons on the service list.

Interested persons may now request electronic notice of filings by providing their e-mail address through COOL under this docket number: R09-20. This electronic notice includes notice of the filing of documents that are not typically provided to persons on the Notice List. In addition, COOL provides links to documents filed with the Board, and those documents can be viewed, downloaded, and printed free of charge as soon as they are posted to the Board's Web site. For more information about the option of electronic notice or COOL, consult either the Board's Web site at www.ipcb.state.il.us or John Therriault, the Board's Assistant Clerk, at (312) 814-3629.

At the close of the second hearing, the hearing officer will set a date by which the record will close and all public comments must be submitted. *See* 35 Ill. Adm. Code 102.108. As the Board is aware that the Agency would appreciate Board decision making as soon as possible, the post-hearing comment period will not be lengthy unless unanticipated circumstances dictate otherwise.

IT IS SO ORDERED.



Kathleen M. Crowley
Hearing Officer, Illinois Pollution Control Board
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