

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

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REP. DAVE VELLA

MINUTES

August 16, 2023

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on Wednesday, August 16, 2023, at 11:00 a.m. in Room D-1 of the Stratton Office Building, Springfield. Co-Chair Spain called the meeting to order and announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee meetings. Other persons are encouraged to submit their comments to the JCAR office in writing.

ATTENDANCE ROLL CALL

Senator Cristina Castro	X	Representative Eva-Dina Delgado
X Senator Bill Cunningham	X	Representative Jackie Haas
X Senator Donald DeWitte	X	Representative Steven Reick
Senator Dale Fowler	X	Representative Ryan Spain
Senator Kimberly A. Lightford		Representative Curtis J. Tarver, II
Senator Sue Rezin	X	Representative Dave Vella

APPROVAL OF THE MINUTES OF THE JULY 18, 2023 MEETING

Rep. Reick moved, seconded by Sen. DeWitte, that the minutes of the July 18, 2023 meeting be approved. The motion passed unanimously (7-0-0).

AGENCY RESPONSE

Pollution Control Board – Permits and General Provisions (35 Ill. Adm. Code 201; 46 Ill. Reg. 20627); Alternative Control Strategies (35 Ill. Adm. Code 202; 46 Ill. Reg. 20638); Visible and Particulate Matter Emissions (35 Ill. Adm. Code 212; 46 Ill. Reg. 20644)

Marie Tipsord, General Counsel, represented PCB. Dana Vetterhoffer, Charles Matoesian, and Audrey Walling, Assistant Counsels, represented EPA.

Co-Chair Cunningham: Thank you to the representatives of both agencies for being here and for the work you've done. We've asked you to take a cooperative approach here and we feel that thus

far you have done that. We do have a series of questions for you—they've been developed by JCAR staff—that I'd like you to provide some answers to. If you can't provide them to us today, if you can get back to us quickly with these answers it would be very helpful in moving the process forward. I have a handful of questions. Be forewarned, they are compound questions. I'll start with this: When will IEPA share the proposed alternative emissions limitations (AELs) with USEPA? Will IEPA's evaluation of these AELs include input from the USEPA, and if not, why not?

Mr. Matoesian: The USEPA is on the service list and it being a (Pollution Control) Board rule it would be the Board's opportunity to share it with the USEPA.

Ms. Vetterhoffer: It's being on the service list means that USEPA is already served with all of the proposals, so they do already have them. And any position the agency would take would hopefully be done with discussions with USEPA. We can't force them to take a position or share it with us, but that is the normal course is that we would speak with USEPA—

Co-Chair Cunningham: It's my understanding the alternate approaches have occurred in other states, so I assume there's been communication in those cases—maybe you know this and maybe you don't—with the USEPA and with environmental regulators in those states? I understand that Florida and Washington have come up with some alternate approaches. Do you know?

Ms. Vetterhoffer: I'm not aware of Florida; I am aware that Washington has a proposed approval but it has not been finalized.

Co-Chair Cunningham: I'm just curious if you know if they had the kind of interaction with the USEPA that we're contemplating here.

Ms. Vetterhoffer: I don't.

Co-Chair Cunningham: Do you have any sort of sense of how the USEPA will view these alternative approaches?

Mr. Matoesian: We really don't at this point.

Ms. Vetterhoffer: And the proposals were filed about a week ago so we're not even sure if USEPA's even had a chance to fully review.

Co-Chair Cunningham: Will the PCB need to adopt these AELs in rule before USEPA can formally evaluate them? If so, what would IEPA and PCB do if USEPA disapproves the alternative proposals that were already adopted in rule?

Ms. Tipsord: It's my understanding that USEPA won't comment on approval or disapproval generally unless they're adopted. I do know what my personal experience has been, that there are times that USEPA will weigh in during the Board's rulemaking process, but that's highly unusual. It's almost always after there's some sort of an adoption of the rule, and then it's between when the IEPA presented to them that that they start reacting. Is that your experience as well, Dana?

Ms. Vetterhoffer: For any official opinion, yes it is. What our conversations with them normally are, it's more of a matter of do they think they are likely approvable? They don't take any official

position, but they'll also share with us whether they think a standard or rule being developed is likely approvable.

Co-Chair Cunningham: So it will give you an idea of whether you're on the right track or the wrong track, generally speaking?

Ms. Vetterhoffer: In the past, yes, they have.

Co-Chair Cunningham: Can you walk us through the mechanics and timetable for these alternative emission limitation rulemakings? Does PCB plan to file these AELs as proposed rulemakings before USEPA has approved them?

Ms. Tipsord: Yes. In fact, the Board meets tomorrow, and these are on the Board's agenda to proceed to first notice. The Board had indicated in a prior Board order that if we received proposals we would proceed as quickly as possible with what we call a nonsubstantive first notice. We aren't commenting on the substance of the rule, but we'll send it to First Notice. The Board meets tomorrow, it's on the Board's agenda. I will also tell you that with the five proposals that we received, Rain Carbon and East Dubuque both asked for hearings on their proposals as they're new to the process. We also received a comment already from IEPA asking that we hold two hearings, so it is in anticipation that the Board will in fact adopt a First Notice proposal, which of course it's up to them. The hearing officer has already reached out to attorneys to set hearing dates for those hearings, and that would include allowing for prefiled testimony and questions and the like. It is anticipated that we'll hold hearings this fall.

Co-Chair Cunningham: I think you kind of just answered my next question, which is how soon after the 45-day First Notice comment period would you anticipate PCB would take before filing for Second Notice.

Ms. Tipsord: And that depends. At the second hearing we will consult with all of the participants and ask them how much time they want to comment on the rules, and once we get their comments in then the Board can proceed or determine whether proceeding to Second Notice is appropriate.

Co-Chair Cunningham: How have communications been between IEPA and the parties seeking alternative emissions limitations?

Mr. Matoesian: To date we have had one meeting with a source. No other source has asked for a meeting with us.

Co-Chair Cunningham: Okay. We'd encourage you if they do to continue to try to meet with them cooperatively as you already have.

Mr. Matoesian: Of course. Thank you.

Co-Chair Cunningham: Are there any other plans in motion to facilitate these two-way communications or is it you're saying "we're here; if you want to discuss it, come and see us"?

Mr. Matoesian: Yes; that's essentially how it is. If they'd like a meeting, we'd definitely entertain the option.

Co-Chair Cunningham: Have there been any updates from USEPA regarding the SIP submitted this month to avoid the sanctions? Has the possibility of sanctions been essentially closed off?

Mr. Matoesian: Yes. They did find the SIP complete on August 11, which was the deadline.

Co-Chair Cunningham: So we've been told by the USEPA that we're no longer in jeopardy of the sanctions?

Mr. Matoesian: Yes.

Co-Chair Cunningham: Okay. That's good to know. Once again, thank you for your cooperation. We look forward to continuing to work with you on this.

Sen. DeWitte: Have we avoided any of the sanction business that federal EPA has been threatening? Has the sanction issue been resolved at this point?

Mr. Matoesian: Yes. When the USEPA found the SIP package complete—the SIP revision, I should say—complete, that did prevent any sanctions from coming into effect.

Co-Chair Spain: As one final question. We're in a period of a little bit of limbo waiting for the proposals for alternative emissions to work through the process, and I appreciate the good faith efforts in doing so. What does this mean for regulated industry at the time being? Are there notifications that are going out to industry that there's a noncompliance issue now for SSMs? What's the practice for the IEPA in this interim limbo period that we find ourselves in?

Ms. Vetterhoffer: First, the Illinois EPA has a slightly different position than we know people impacted by the SSM provisions have in that our position is that noncompliance with emissions standards have always been violations, and that these provisions that have been repealed simply provided an affirmative defense should enforcement ensue. Otherwise, it's just a matter of paying attention to the fact that these SSM provisions were pulled out. Of course, when sources come in for renewals of their permits just during the course of normal permit renewal, if they had not been made aware that the SSM provisions will not appear in those permits they will be made aware at that point.

Co-Chair Spain: So, under the regular order of permit renewals, that will be the communication provided on the change for an affirmative defense?

Ms. Vetterhoffer: Right, other than the Board's public notice of the adopted rule, yes.

Co-Chair Spain: I think, much as we talked about last time, and maybe there's been only one effort for outreach, I think the more outreach and engagement the better on this, really trying to clear up the questions that exist about next steps. Maybe there are things we can learn from two very different states that have gone through a process to have alternative emissions approved—the State of Washington and now the State of Florida—this is very recent, maybe within the last week, but understanding their timeline I think would be pretty relevant. Again, I appreciate the commitment to continue working with, meeting with, having discussions with stakeholders. And, if we need to

encourage people to reach out directly, we'll certainly do that because we're hearing from them quite frequently.

Co-Chair Spain announced that the Agency Responses will remain on JCAR's agenda, appearing again on the September agenda.

REVIEW OF AGENCY RULEMAKINGS

Department of Healthcare and Family Services – Medical Payment (89 Ill. Adm. Code 140; 47 Ill. Reg. 5872)

Rep. Delgado moved, seconded by Rep. Haas, that JCAR, with the concurrence of the Department of Healthcare and Family Services, extend the Second Notice period for this rulemaking for an additional 45 days. The motion passed unanimously (7-0-0).

Department of Healthcare and Family Services – Special Eligibility Groups (Emergency) (89 Ill. Adm. Code 140; 47 Ill. Reg. 5872)

Ben Winick, Chief of Staff, and Omar Shaker, Counsel, represented HFS.

Rep. Delgado: Thank you all for coming back today. What I was hoping is you'd talk a little bit about what you've been doing over the past month, because I know what we had discussed in the last meeting was that there'd be some communication and engagement with stakeholders and advocates on this issue. So if you could all give us a summary of some of the work you've been doing over the past month, that would be fantastic.

Ben Winick: I'm happy to. We have had a number of different meetings with advocacy organizations that are very much interested in the subject matter. We have met with the Illinois Coalition for Immigrant and Refugee Rights, Healthy Community Foundation, Metropolitan Family Services, Sinai Health System, Catholic Charities, Shriver Center for Poverty Law, Legal Action Chicago. In addition to that we have had a meeting with the Medicaid Advisory Committee, which is a group that meets quarterly. This subject was raised in that meeting. That is an open meeting and does allow for public comments, so there were a number of other advocacy organizations that participated in that. In addition to that, we have the Public Education Subcommittee of the Medicaid Advisory Committee meeting scheduled for that, where there will be further discussion on this subject. That's currently scheduled for August 23, next week. That is also a public meeting where public comment will be welcome. I do want to know for members of the committee, just so you're aware, the bylaws of that group follow Robert's Rules of Order. Robert's Rules of Order say that if a quorum of the committee is not present, they cannot meet. So the meeting had to be canceled in the past for that purpose. Hopefully we do have a quorum but just in case anyone says it was canceled at the last minute, that's why. And then in addition to that there was a formal request for a public hearing as part of the permanent rules and that has now been scheduled for September 5 at 11 a.m. We are hosting the meeting virtually with the goal of allowing anyone who wishes to participate the easiest means of doing so. Any other questions?

Rep. Delgado: No, I think that's great. Thank you so much for taking our comments last month and putting them into actions and communications. I appreciate that. I look forward to continuing to have updates from you all so you can keep us posted about what's happening. Again, that public

hearing has been scheduled for September 5, right, so I assume there is some public process where you make sure that information is available so that folks can know how to get access to that Webex and what all of the expectations are for that hearing. I'm sure there's going to be a lot of folks who want to speak, so I'm sure you will want to put some ground rules on it for folks to understand.

Mr. Winick: We are requiring or requesting that anyone who wishes to comment register in advance. The deadline to register is the Friday before the hearing. So that is required, but the structure of that public hearing will likely depend on how many people are registered.

Rep. Delgado: And there will be communication with the public about that information?

Mr. Winick: Yes. And I believe that has been posted or will be posted today.

Rep. Delgado: And that's posted on your website, correct?

Mr. Winick: Yes, on the public notices section. We would be happy to send you the link as well.

Rep. Delgado: That would be great. And I am sure that some of my other colleagues would be happy to share that information, to put it out there to make sure that folks know that that's the opportunity to comment. And just for clarification, that public hearing is about the permanent rule, correct? So while we're talking about the emergency rule right now that's going to be on the permanent rule. Thank you. I appreciate you all coming back to provide that update. I do have one thing that I want to put on your radar screen for the permanent rule, and I know we're not talking about that now but I thought I'd take the opportunity. I've heard some folks raising some concerns around the copay issue and making sure that there is some sort of communication to providers to understand exactly how that will work. I don't know if you all have gotten to the point where you have the details around how that copay process is going to work, but that is certainly something that there has been some concern around. And again with this population we know that they may be limited English-proficient, communicating that information's going to be super-important.

Mr. Winick: And we are very close to finalizing both a consumer notice for individuals enrolled in the program as well as a provider notice so that both the customers and providers have as much clarity as possible on the policy changes.

Rep. Delgado: Thank you. And again I want to thank you all for coming back. And I think this will be a topic of conversation that's going to be continuing here before JCAR, so I look forward to continuing to hear the update.

Department of Children and Family Services – Licensing Standards for Day Care Centers (Emergency) (89 Ill. Adm. Code 407; 47 Ill. Reg. 8756)

Department of Healthcare and Family Services – Special Eligibility Groups (Emergency) (89 Ill. Adm. Code 118; 47 Ill. Reg. 9114)

Co-Chair Spain announced that these rulemakings would be removed from the No Objection List and placed on the September agenda.

CERTIFICATION OF NO OBJECTION

Sen. DeWitte moved, seconded by Rep. Delgado, that the Committee inform the agencies to whose rulemakings the Committee has not voted an Objection or Extension, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based upon the Agreements for modification of the rulemaking made by the agency, no Objections will be issued. The motion passed unanimously (7-0-0).

ANNOUNCEMENT OF SEPTEMBER MEETING

Co-Chair Spain announced that the next JCAR meeting will be Tuesday, September 12, 2023, at 11:00 a.m. in Room C600 of the Bilandic Building, Chicago, Illinois.

ADJOURNMENT

Co-Chair Cunningham moved, seconded by Rep. Reick, that the meeting stand adjourned. The motion passed unanimously (7-0-0).

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