

0001

1 ILLINOIS POLLUTION CONTROL BOARD  
2 IN THE MATTER OF: )  
PROCEDURES TO BE FOLLOWED ) (Rulemaking-  
3 IN THE PERFORMANCE OF ) Bureau of Air)  
INSPECTIONS OF MOTOR VEHICLE )  
4 EMISSIONS: )  
35 Ill. Adm. Code Part 276 )

5

6

7 REPORT OF THE PROCEEDINGS held in the  
8 above entitled cause before Hearing Officer Dean  
9 Studer, called by the Illinois Pollution Control  
10 Board, taken by Steven Brickey, CSR, for the State  
11 of Illinois, 100 West Randolph Street, Chicago,  
12 Illinois, on the 2nd day of April, 2011,  
13 commencing at the hour of 1:30 p.m.

14

15

16

17

18

19

20

21

22

23

24 L.A. COURT REPORTERS, LLC. (312) 419-9292

1

A P P E A R A N C E S

2 MR. DEAN STUDER, Hearing Officer  
MR. KENT MOHR, JR.  
3 MR. RONALD WOHRLE  
MR. STEPHEN THORPE  
4 MR. MICHAEL HILLS  
MS. BARBARA BAXTER

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24 L.A. COURT REPORTERS, LLC. (312) 419-9292

1                   MR. STUDER: Good afternoon. My  
2 name is Dean Studer and I'm the hearing officer  
3 for the Illinois Environmental Protection Agency  
4 commonly referred to as the Illinois EPA or the  
5 Agency. My purpose today is to ensure that this  
6 hearing runs in a fair and orderly manner and  
7 according to rules.

8                   This hearing is being held for  
9 the purpose of gathering public comment on  
10 proposed amendments to the Illinois EPA's Vehicle  
11 Inspection and Maintenance Program rules entitled  
12 Procedures to be Followed in the Performance of  
13 Inspections of Motor Vehicle Emissions, 35 Ill.  
14 Adm. Code Part 276.

15                   The proposal would amend the  
16 State of Illinois regulations at 35 Ill. Adm. Code  
17 Part 276 to reflect the adoption of the Vehicle  
18 Emissions Inspection Law of 2005, 625 ILCS 5/13C,  
19 an amendment thereto and to make necessary  
20 improvements to the program. The amendments  
21 proposed the removal of the I/M 240 emissions test  
22 procedures related provisions and definitions and  
23 all references to I/M 240 test procedures to  
24 reflect full implementation of onboard diagnostic

1 testing.

2                               The amendments require a subject  
3 vehicle owner to obtain, but not display or pass  
4 an emissions compliant certificate in order to  
5 obtain or review the subject vehicle's  
6 registration. The amendments remove all different  
7 types of inspection certificates or stickers and  
8 propose the use of a universal Emissions  
9 Compliance Certificate. The amendments add new  
10 definitions and revise provisions relating to  
11 waivers, economic hardship, fleet self testing,  
12 grievances, test notices and reciprocity.

13                               The amendments propose a new  
14 section relating to the collection and reporting  
15 of repair facility data and a new section  
16 providing requirements for obtaining an Emissions  
17 Compliance Certificate where the vehicle is  
18 located and being primarily operated outside the  
19 affected counties.

20                               Finally, the proposed amendments  
21 revise, update and clarify other provisions in the  
22 rule. Copies of the proposal are available on the  
23 Illinois EPA's web page at  
24 [www.epa.state.il.us/public-notices/](http://www.epa.state.il.us/public-notices/). This is the

0005

1 second of two hearings that Illinois EPA is  
2 holding regarding the proposed amendments to 35  
3 Ill. Adm. Code Part 276.

4                               The first hearing was held in  
5 Edwardsville last Wednesday, February 23rd, 2011.  
6 This hearing is being held under the provisions of  
7 35 Ill. Adm. Code 164, Procedures for  
8 Informational and Quasi Legislative Public  
9 Hearings.

10                              Copies of these procedures can  
11 be accessed on the website for the Illinois  
12 Pollution Control Board at [www.ipcb.state.il.us](http://www.ipcb.state.il.us) or  
13 if you do not have easy access to the web, these  
14 regulations can be obtained from me on request.

15                              Illinois EPA staff members  
16 present today will be introduced and make  
17 presentations. Following this overview, I will  
18 allow the public to ask questions or provide  
19 comments or do both. You are not required to  
20 verbalize your comments as written comments are  
21 given the same consideration and may be submitted  
22 to the Agency at any time within the public  
23 comment period which ends on April 1st, 2011.  
24 Comments will be accepted as long as they are

0006

1 postmarked by April 1st, 2011.

2 All relevant comments, documents  
3 or data will also be placed into the hearing  
4 record as exhibits provided they are received  
5 before the end of the comment period, which is  
6 April 1st, 2011.

7 Please send all written  
8 comments, documents or data to me at the following  
9 address: Dean Studer, D-E-A-N, Studer,  
10 S-T-U-D-E-R, Hearing Officer, Mail Code #5,  
11 Illinois EPA, regarding Revisions to the  
12 Performance of Inspections of Motor Vehicle  
13 Emissions, 1021 North Grand Avenue East, PO Box  
14 19276 Springfield, Illinois 62794-9276.

15 This address is also listed on  
16 the public notice for the hearing today. This  
17 will help ensure that the comments are included in  
18 the hearing record for this proceeding. A court  
19 reporter is here today taking a verbatim record of  
20 these proceedings for the purpose of making our  
21 administrative record. For his benefit, please  
22 keep the general background noise in the room to a  
23 minimum so he can hear everything that is said.

24 Before we start with Illinois



0008

1 I'm an attorney for the Illinois EPA. Seated next  
2 to me is Michael Hills, an engineer in the  
3 Technical Services Section of the Division of  
4 Mobile Source Programs, Illinois EPA Bureau of  
5 Air. Seated next to Mike is Steve Thorpe --  
6 Strike that. Seated next to Mike is Steve Thorpe,  
7 Manager of the Compliance Assurance Section of the  
8 Division of Mobile Source Programs, Illinois EPA  
9 Bureau of Air. Seated next to Steve is Barb  
10 Baxter of the Field Services Section of the  
11 Division of Mobile Source Programs, Illinois EPA  
12 Bureau of Air. Seated next to Barb is Ron Wohrle,  
13 Manager of the Field Services Section of the  
14 Division of Mobile Source Programs, Illinois EPA  
15 Bureau of Air.

16                               After the panel members have  
17 made their presentations, I will discuss various  
18 errors that the Joint Committee on Administrative  
19 or JCAR has made in its first notice version of  
20 the proposed rule.

21                               MR. HILLS: Thank you. My name is  
22 Michael Hills and I'm an engineer with the  
23 Technical Services Section of the Illinois  
24 Environmental Protection Agency's Vehicle

0009

1 Inspection and Maintenance Program or I/M program.  
2 Today, we are presenting proposed amendments to 35  
3 Ill. Adm. Code Part 276 which outlines the  
4 procedures used in Illinois for vehicle emissions  
5 inspections. These amendments will update the  
6 test procedures and compliance requirements to  
7 correspond with the current Vehicle Emissions  
8 Inspection Law as passed by the Illinois General  
9 Assembly in August 2005 and as amended in June  
10 2006 and to update other requirements and  
11 procedures. Specifically, the Vehicle Emissions  
12 Inspection Law of 2005, referred to as the VEIL of  
13 2005, was designed to dramatically reduce the cost  
14 of the program, maintain and improve motorist  
15 acceptance of testing and focus testing on  
16 vehicle's inspected to be in the Illinois fleet  
17 during the 2007 through 2013 timeframe established  
18 for the state's testing contract.

19                   The primary changes required by  
20 the VEIL of 2005 are the full implementation of  
21 onboard diagnostic or OBD pass/fail testing, the  
22 elimination of the transient loaded mode exhaust  
23 (also known as the I/M 240 test), the testing of  
24 non-OBD noncompliant vehicles with the steady

0010

1 state idle exhaust and fuel cap evaporative system  
2 integrity test and the elimination of the fuel cap  
3 test for OBD compliant vehicles.

4 In addition to these  
5 modifications, in June 2006, Public Act 94-848 was  
6 signed into law amending the VEIL of 2005 by  
7 replacing computer matching with registration  
8 denial as the program's enforcement mechanism.

9 I will be addressing the testing  
10 procedure changes. Specifically, I will address  
11 the elimination of the transient loaded mode or  
12 I/M 240 test and the full implementation of the  
13 OBD test.

14 Steve Thorpe will cover the  
15 changes in the enforcement mechanism from computer  
16 matching to registration denial, the economic  
17 hardship, outside affected county compliance, and  
18 reciprocity procedures and fleet self-testing.  
19 Barb Baxter will be addressing the new grievance  
20 procedures. Finally, Ron Wohrle will be  
21 discussing updates to the waiver procedures and  
22 repair performance reporting. I will now provide  
23 more detail on the changes to the Illinois vehicle  
24 emissions test procedures.



0012

1 program.

2 Full implementation of OBD  
3 pass/fail testing. The Agency transitioned into  
4 full implementation of OBD pass/fail testing for  
5 1996 and newer OBD equipped vehicles over a 17  
6 month period. This transition was completed on  
7 January 1st, 2004, at which time all OBD equipped  
8 vehicles were required to pass the OBD inspection  
9 and were no longer subject to an exhaust test.  
10 Therefore, the amendments discussed today do not  
11 have any significant impact on the OBD test  
12 procedures specified in 35 Ill. Adm. Code 276,  
13 Subpart B. The only revision in the subpart was  
14 to eliminate the printing of the OBD advisory only  
15 paragraph on the OBD test report. This paragraph  
16 is no longer applicable with the implementation of  
17 OBD pass/fail.

18 The next speaker is Steve Thorpe  
19 who is the manager of the compliance assurance  
20 section. He will discuss the implementation of  
21 registration denial and changes to other Agency  
22 procedures.

23 MR. THORPE: Implementation of  
24 registration denial. In June 2006, the VEIL of





0015

1 During these outages, the Emissions Compliance  
2 Certificate becomes the backup method of providing  
3 proof of compliance at the time of registration  
4 renewal.

5                               The certificate contains a bar  
6 code that an Illinois Secretary of State  
7 technician can use to certify the compliance  
8 status of the vehicle. Additionally, Subpart C,  
9 Section 276.311 (change of assigned test month)  
10 was repealed because the Agency no longer issues  
11 an assigned test month under registration denial.

12                               All vehicles are now required to  
13 test based on their registration expiration month  
14 or a test by date. The Illinois Secretary of  
15 State has instituted a procedure to accommodate  
16 these motorists by allowing registration  
17 expiration month extensions.

18                               The implementation of  
19 registration denial also changed the motorist  
20 notification requirements. Specifically, the VEIL  
21 of 2005 was amended to require only one motorist  
22 notification for the test requirement. This  
23 notification is to be sent by the Illinois  
24 Secretary of State 30 days prior to the beginning

0016

1 of the month in which the vehicle's registration  
2 is due to expire.

3                               35 Ill. Adm. Code 276, Subpart  
4 I, notices has been modified to reflect the  
5 changes in the notification requirement specified  
6 in the VEIL of 2005 including the elimination of  
7 the warning notice. Economic hardship extension  
8 requirements Subpart D was changed to update the  
9 term economic hardship extension to a one year  
10 exemption certificate corresponding with the  
11 simplification of the notification process in  
12 Subpart C.

13                               Outside of affected counties  
14 annual exemption. When the VEIL of 2005 was  
15 amended to add registration denial as an  
16 enforcement mechanism, it provided to owners of  
17 vehicles located and being primarily operated  
18 outside the affected counties and in an area not  
19 requiring testing the ability to receive a one  
20 year exemptions compliance certificate without  
21 inspection.

22                               This removal -- excuse me. This  
23 removed the requirement for a temporary extension.  
24 Therefore, the Agency developed the outside of

0017

1 affected counties annual exemption requirement in  
2 Section 276.405, which specifies the documentation  
3 the Agency will accept as proof of the vehicle's  
4 location. The Agency will use this documentation  
5 to determine if the vehicle is located outside the  
6 affected counties and in an area that does not  
7 require testing.

8                               If the vehicle is located in  
9 another jurisdiction outside Illinois which  
10 requires vehicle emissions testing, the Agency  
11 will require the motorist to comply with the  
12 emissions test requirement by following  
13 reciprocity procedures specified in 35 Ill. Adm.  
14 Code 276, Subpart J.

15                               Fleet self-testing requirements.  
16 Pursuant to the VEIL of 2005, any owner or lessee  
17 of the fleet -- of a fleet of 15 or more motor  
18 vehicles that are subject to inspection may apply  
19 to the Agency for a permit to establish and  
20 operate a private official inspection station.

21                               35 Ill. Adm. Code 276, Subpart  
22 G, fleet self-testing requirements, has been  
23 modified to reflect the change in the VEIL of  
24 2005. One key change is the removal of any -- of

0018

1 an obsolete provision allowing use of previous  
2 fleet self-testing equipment for a five year  
3 period beginning with the last major program  
4 change in 1998.

5                                 Additionally, we have clarified  
6 that any fleet self-tester in the current program  
7 must utilize equipment approved by the Agency and  
8 which must meet the same performance, maintenance  
9 and calibration requirements as all other test  
10 stations in the vehicle inspection network. Other  
11 changes to this subpart were made to reflect the  
12 implementation of registration denial.

13                                 Finally, the procedures to  
14 obtain fleet inspection permits, suspend or revoke  
15 such permits and fleet self-testing operating  
16 requirements have all been modified for clarity  
17 and consistency.

18                                 Reciprocity procedures, 35 Ill.  
19 Adm. Code 276, Subpart J, reciprocity with other  
20 jurisdictions, details the requirements for  
21 compliance determination for vehicles registered  
22 in an affected county in Illinois that are being  
23 primarily operated in another jurisdiction which  
24 requires vehicle emissions testing or vehicles

0019

1 registered in another jurisdiction outside  
2 Illinois which requires vehicle emissions testing,  
3 but are primarily used in a vehicle emissions  
4 inspection area in Illinois.

5                   The only significant change to  
6 the reciprocity procedures for vehicles registered  
7 in Illinois vehicle emissions inspections area is  
8 the removal of the requirement that the vehicle  
9 will not be returning to an Illinois vehicle  
10 emissions inspection area within seven months  
11 after the vehicle's assigned test month.

12                   This was removed because the  
13 registration denial enforcement mechanism is not  
14 based upon assigned test month, but is now based  
15 on the registration expiration date.

16                   In dealing with the nonexempt  
17 vehicles outside of Illinois vehicle emissions  
18 inspection area, the Agency will no longer require  
19 a written request for the motorist to test the  
20 vehicle at an Illinois test program inspection  
21 station. All that is required is that the  
22 motorist purchase a test voucher at the station  
23 for a voluntary test. The motorist can then  
24 submit the results of the voluntary test for the

0020

1 jurisdiction requiring emissions inspection by  
2 providing the vehicle inspection report.

3                   The Agency eliminated the  
4 requirement for written authorization because as  
5 specified in 625 ILCS 5/13C-15, vehicle tests  
6 outside of Illinois' vehicle emissions inspection  
7 areas should be treated as voluntarily inspections  
8 and should be subject to the applicable \$20 fee.

9                   The next speaker is Barb Baxter  
10 with the field services section. She will discuss  
11 the changes to the Agency's grievance procedures.

12                   MS. BAXTER: 35 Ill. Adm. Code Part  
13 276, Subpart H, grievance procedure, details the  
14 process the motorist and the Agency must follow  
15 regarding a disagreement relating to the failure  
16 of an emissions test or a denial of a waiver. The  
17 main addition to these procedures is the  
18 requirement that in the case of a waiver denial,  
19 the Agency may investigate the claim of a motorist  
20 of the unavailability of parts needed to complete  
21 the necessary repairs.

22                   If the motorist states he cannot  
23 obtain the parts necessary for a waiver, he must  
24 provide documentation showing the unavailability

0021

1 of such parts from at least three independent  
2 sources, one of which shall be the original  
3 equipment manufacturer. If the motorist meets  
4 these requirements, the Agency may override the  
5 original decision and grant the waiver. The next  
6 speaker is Ron Wohrle who is the manager of the  
7 field services section. He will discuss the  
8 changes to the waiver and repair facility  
9 reporting procedures.

10 MR. WOHRLE: Waivers, the only major  
11 change in the waiver requirements with the  
12 implementation of the VEIL of 2005 was the removal  
13 of the requirement that, quote, repairs have  
14 resulted in an improvement in vehicle emissions as  
15 determined by comparison of initial and final  
16 retest results, close quote. This change was made  
17 because under the OBD test there are no exhaust  
18 emission readings to compare between the initial  
19 and final retest. 35 Ill. Adm. Code 276 Part 401  
20 was updated to show the removal of this  
21 requirement. Additional changes to clarify and  
22 implement the waiver requirements include:

23 A, the required evidence of  
24 repair work will include a description of

1 diagnostic procedures and justification that  
2 repairs performed were appropriate for emissions'  
3 failure. This will ensure that only emissions  
4 related affairs will be included in the minimum  
5 expenditure total.

6                               B, providing that  
7 emission-related repairs performed not more than  
8 30 days prior to the current test eligibility date  
9 or assigned date may be applied to the \$450  
10 minimum expenditure if the repairs were  
11 appropriate for the diagnostic trouble codes  
12 present at the time of the initial failure.

13                               C, requiring that the vehicle's  
14 malfunction indicator light or MIL is operative  
15 prior to waiver issuance. Without an operational  
16 MIL, the motorist will not be aware of possible  
17 future emissions component malfunctions.

18                               D, requiring passing of the fuel  
19 cap test for vehicles subject to a steady state  
20 idle exhaust test for waiver issuance.

21                               E, allowing waivers to be issued  
22 to a vehicle owner's agent. In the event the  
23 vehicle owner is not present, the waiver may be  
24 issued to the vehicle owner's designee if specific

1 written authorization on a form prescribed by the  
2 Agency is presented at the time of the waiver  
3 application.

4                                 Repair facility performance  
5 reporting. The Agency has been providing a  
6 compiled report otherwise known as the repair shop  
7 report since the implementation of enhanced  
8 vehicle emissions testing in early 1999. The  
9 purpose of this report card is to help motorists  
10 who have failed an emissions test locate a repair  
11 shop that can diagnose and repair emissions  
12 related failures. The Agency has added a new  
13 subpart to Ill. Adm. Code to 276, which lays out  
14 procedures for collecting and reporting repair  
15 data resulting from a vehicle inspection failure  
16 or OBD readiness reject.

17                                 35 Ill. Adm. Code 276 Subpart K,  
18 repair facility performance reporting, specifies  
19 the methods and procedures for collecting repair  
20 data and reporting repair shop performance.  
21 Additionally, this subpart includes enforcement  
22 provisions which exclude repair shops from the  
23 compiled report for improper advertisement,  
24 solicitation, test fraud and/or violations of the

1 website user agreement.

2                                 Finally, this section provides a  
3 dispute resolution process for cases where the  
4 repair shops feel they have been wrongly excluded  
5 from the report.

6                                 MR. MOHR: Thanks, Ron. After an  
7 agency files a rulemaking with the Secretary of  
8 State's index department, the index department and  
9 JCAR review the rule, make any necessary changes  
10 to formatting and then publish a first notice  
11 version of the proposed rule in the Illinois  
12 Register.

13                                 Unfortunately, for this proposed  
14 rule during that process, JCAR made various  
15 substantive errors in its first notice version  
16 which was published in the Illinois Register on  
17 January 3rd, 2011, at 35 Illinois Register 14.

18                                 In an effort to have the errors  
19 corrected, the Illinois EPA has informed JCAR that  
20 the following corrections should be made to its  
21 first notice version of the proposed rule. One,  
22 Section 276.102, line 400 should read  
23 "preconditioning mode means a period of steady  
24 state loaded mode or." The terms "loaded mode or"

0025

1 should be struck. Two, after the Illinois EPA's  
2 proposed changes to Section 276.501, lines  
3 1718-1734 should read "compliance with Illinois  
4 vehicle test standards shall be determined by  
5 following the test procedures set forth in Subpart  
6 B of this part and by utilizing the following: A,  
7 steady state idle test equipment meeting the  
8 specifications set forth in Sections 276.502 and  
9 276.503 of this part; and, B, evaporative system  
10 test equipment meeting the specification set forth  
11 in Section 276 Part 504 of this part; or, C,  
12 on-road remote sensing test equipment meeting the  
13 specifications set forth in 276.507 of this part;  
14 or, D, OBD test equipment meeting the  
15 specifications set forth in Section 276.508 of  
16 this part. The formatting of this section was  
17 incorrect.

18 Three, revisions to Section  
19 276.804 are missing. This section is also missing  
20 from JCAR's first -- Strike that -- version of the  
21 notice of proposed amendments. The revision to  
22 this section changes the citation to the  
23 administrative review law and reads as follows;  
24 Section 276.804, review of agencies determination,

0026

1 the agencies written determination shall be  
2 subject to review in the circuit court in  
3 accordance with the provisions of the  
4 Administrative Review Law, 735 ILCS 5/3-101  
5 et.seq, meaning et seq.

6                                   Four, Section 276.301, line  
7 1330, the term thereof should not be stricken.  
8 The Agency is in the process of discussing these  
9 necessary changes to the rule and expects to  
10 finalize an agreement with JCAR soon. This  
11 concludes the Agency's presentation regarding the  
12 proposed amendments to 35 Ill. Adm. Code Part 276.  
13 Dean?

14                                   THE COURT: Thank you, Kent. Let  
15 the record indicate that there are no members of  
16 the public that were present at this hearing. The  
17 hearing record will remain open until April 1st,  
18 2011. Illinois EPA will respond to any  
19 significant issues that are raised in written  
20 comments in a responsive summary. If no  
21 substantive comments are filed with the Agency in  
22 the proceeding, we may not issue a responsive  
23 summary. With no further ado, I think we'll go  
24 ahead and close this hearing. This hearing is

0027

1 adjourned.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF COOK )  
4

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 \_\_\_\_\_ day of  
15 \_\_\_\_\_, A.D., 2010.

16  
17  
18  
19  
20  
21  
22  
23  
24

---

STEVEN BRICKEY, CSR  
8 West Monroe Street  
Suite 2007  
Chicago, Illinois 60603  
Phone: (312) 419-9292  
CSR No. 084-004675