

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1981

IN THE MATTER OF:)
) R80-18
AMENDMENT TO CHAPTER 1:)
PROCEDURAL RULES 304 AND 308)

ADOPTED RULE: FINAL ORDER.

FINAL ORDER OF THE BOARD (by J. Anderson):

On October 8, 1981 the Board directed that the proposed rules be sent to the Joint Committee on Administrative Rules (JCAR) for its "second notice" review. In response to JCAR comments, the Board has added a new clarifying sentence to the end of Rule 308(e) and has corrected the lettering of the proposed addition to Rule 304. JCAR has no objection to the rules with these modifications.

The Board hereby adopts the following rules. Deleted language is lined through, new language is underlined.

Chapter I: Procedural Rules

304 Notice, and Formal Complaint, and Answer

(a)-(c) No change.

(d) Respondent may file an answer within 30 days of receipt of the complaint. All material allegations of the complaint shall be taken as denied if not specifically admitted by the answer, or if no answer is filed. Any facts constituting an affirmative defense which would be likely to take the complainant by surprise must be plainly set forth prior to hearing in the answer or in a supplemental answer filed pursuant to Rule 326(b).

308 Motions and Answers Responses

(a) ~~Unless respondent files an answer within 30 days of receipt of the complaint, all material allegations shall be taken as denied.~~ All motions preliminary to a hearing shall be presented to the Board or to the Hearing Officer at least 14 days prior to the

date of the hearing, or on such other date as the Hearing Officer or the Board shall designate. All motions by respondent to dismiss or strike the complaint or challenging the jurisdiction of the Board shall be filed within 14 days after receipt of the complaint shall be directed to the Board and shall be disposed of prior to the hearing on the complaint, subject, however to the provisions of subsection (e) and (i) of this Rule. Motions by complainant to voluntarily dismiss an action against any or all parties as to any or all claims shall be directed to the Board and may be made orally upon the hearing record, or may be made in writing at any time prior to issuance of the Board's decision. All motions must be served on all parties, including the Agency and its representative and the Hearing Officer designated by the Board with proof of service. Oral argument on motions before the Board shall be permitted only by order of the Board.

- (b) Unless made orally on the record during a hearing or unless the Hearing Officer directs otherwise, a motion shall be in writing, shall state the reasons for and grounds upon which the motion is made, and may be accompanied by any affidavits or other evidence relied on, and, when appropriate, by a proposed order. All written motions by complainant to voluntarily dismiss an enforcement action shall be accompanied by affidavit attesting to the truth of the facts alleged.
- (c)-(d) No change.
- (e) The Hearing Officer shall rule upon all motions, except that he shall have no authority to dismiss, or rule upon a motion to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof. The Hearing Officer shall refer any such motions to the Board pursuant to subparagraph (a) of this section. Notwithstanding the provisions of paragraph (a) above, the Board in its discretion, may direct that hearing on the proceeding be conducted and, in its discretion, may take all motions directed to it with the case. This conditional ruling by the Board shall not foreclose a party from advancing the same contentions as to jurisdiction or adequacy of the complaint upon the completion of the hearing. When ruling on a motion by complainant for voluntary dismissal of an action the Board shall, for reasons stated in its Order, dismiss the action without leave to reinstate if justice so demands. Among the factors to be

considered in making such a determination are evidence and arguments concerning the action's age and procedural history, and the prejudicial effects, if any, of dismissing the action with leave to reinstate.

(f)-(i) No change.

As these changes are not substantial, the Board hereby adopts the Proposed Opinion of October 8, 1981, without change, as its Final Opinion in this rulemaking.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 14th day of November, 1981 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board