

ILLINOIS POLLUTION CONTROL BOARD

June 22, 2017

IN THE MATTER OF: )  
)  
PROCEDURAL RULE AMENDMENTS: ) R 17-18  
PROPOSED AMENDMENTS TO 35 ILL. ) (Rulemaking - Procedural)  
ADM. CODE 101 THROUGH 130. )

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by J.A. Burke, K. Papadimitriou):

The Board today adopts amendments aimed to streamline its procedural rules. The Board is in the process of reviewing all its rules to streamline, update and overhaul its regulations. The Board initiated this review because some rules were no longer current due to changing technology and the passage of time, and with the additional impetus provided by Governor Rauner's Executive Order 2016-13.

The Board provided an overview of this rulemaking in its first notice opinion. *See Procedural Rules Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 through 130, R17-18, slip op. at 1-3 (Jan. 19, 2017).* The first-notice opinion and order were adopted on January 19, 2017. The amendments were then published in the *Illinois Register* on February 10, 2017 (41 Ill. Reg. 1293-1571). The Board received five public comments, which the Board addressed in its second-notice order adopted on April 12, 2017. *See Procedural Rules Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 through 130, R17-18, slip op. at 2-5 (April 12, 2017).*

The Office of the Attorney General, in a public comment filed in response to the Board's second-notice order, submitted an e-mail address for purposes of providing electronic notice of initial filings.

The Board is modifying text in proposed section 101.1030(g)(2), and adding text to sections 105.116(b) and 107.304(b). 35 Ill. Adm. Code 101.1030(g)(2), 105.116(b), 107.304(b). The new text requires filings to have pagination in the top right corner of each page. These changes are needed because, when a Board decision is appealed to the Appellate Court, the Board's record on appeal must have its own sequential page numbering, which Illinois Supreme Court standards now require to appear in the bottom right corner of each page. Ill. Sup. Ct. Standards & Requirements, Electronic Filing the Record on Appeal, § 4(a)(ii). The changes will avoid the Board lacking the necessary space on each page to paginate its record on appeal and avoid confusion over two page numbers appearing in the bottom right corner.

In Section 105.118 on sanctions for failing to prepare a record as required, the Board adds "unreasonably" before "fails to prepare". 35 Ill. Adm. Code 105.118. This change is consistent with the existing text in the first part of the sentence: "unreasonably fails to timely file the record". The change is also consistent with Section 101.800(a), the Board's general

procedural rule on sanctions: “If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 . . . , the Board may order sanctions.” 35 Ill. Adm. Code 101.800(a). Section 105.118 merely restates this sanction language in the context of Part 105 records. When deciding whether to impose a sanction, the Board considers “the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.” 35 Ill. Adm. Code 101.800(c).

The Joint Committee on Administrative Rules (JCAR) issued a certificate of no objection on June 13, 2017. JCAR proposed stylistic, non-substantive amendments to the proposed rules which the Board accepts and includes in the adopted amendments.

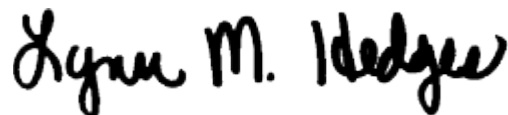
### **ORDER**

The Board directs the Clerk to submit the adopted amendments to the Secretary of State for publication in the *Illinois Register*. Proposed additions are underlined, and proposed deletions appear stricken.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2016); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Lynn M. Hedges, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 22, 2017, by a vote of 5-0.



Lynn M. Hedges, Acting Clerk  
Illinois Pollution Control Board