

From: [McGill, Richard](#)
To: [Brown, Don](#)
Subject: docket as PC in R21-18
Date: Monday, December 7, 2020 4:42:37 PM

Good evening, Mr. Clerk:

Please docket this forwarded email exchange with JCAR as a public comment in R21-18.

Thank you.

Richard R. McGill, Jr.
Illinois Pollution Control Board
Senior Attorney for Research & Writing
richard.mcgill@illinois.gov
(312) 814-6983

From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Monday, December 7, 2020 4:31 PM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] RE: Usage of must vs. shall

Thank you. I passed along your response, and will let you know what I hear.

Jonathan

From: McGill, Richard [<mailto:Richard.McGill@illinois.gov>]
Sent: Monday, December 7, 2020 3:24 PM
To: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Subject: RE: Usage of must vs. shall

Good afternoon, again:

Rules are *legal* requirements, of course, and I used the term “legal” only in that sense.

With respect, I think you’re reading the definition entry out of context. For that entry, the example provided is “you *must* stop”. If the phrase “you must stop” appears *in a rule*, stopping is mandatory—if “you” continue (*i.e.*, do not stop), then “you” are not complying with the rule. The phrase does not give “you” the discretion to continue; that would be

“you *may* stop.”

Having rules easily understood by all citizens is precisely why the Board has long emphasized using plain language in its rules rather than legalese like “shall.”

Thank you.

Richard R. McGill, Jr.
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Senior Attorney for Research & Writing
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From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Monday, December 7, 2020 1:13 PM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] RE: Usage of must vs. shall

Definition 1(a) from Merriam-Webster says must = “be commanded or requested to” (<https://www.merriam-webster.com/dictionary/must>). While that is not a specifically legal source, my agency maintains that the Illinois Administrative Code exists to be read by citizens, not simply lawyers.

Hope that helps.

Thanks.

Jonathan

From: McGill, Richard [<mailto:Richard.McGill@illinois.gov>]
Sent: Monday, December 7, 2020 12:29 PM
To: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Subject: RE: Usage of must vs. shall

Good afternoon, Jonathan:

Before considering the request, which could have sweeping implications for the Board’s rules, it would help to have more information.

I respectfully ask that you share with me any legal writing authorities calling for “must” to convey discretion. We try to keep an open mind

with our rule writing, but we haven't seen any weakening in the plain language movement favoring "must" over "shall" to convey "is required to," let alone a suggestion that "must" should be used to convey "has discretion to." We are also unaware of any recent case law holding that "must" is a discretionary term.

Thank you.

Best regards,

Richard

Richard R. McGill, Jr.
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From: Eastvold, Jonathan C. <JonathanE@ilga.gov>
Sent: Monday, December 7, 2020 10:06 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] Usage of must vs. shall

Richard –

I've been asked to convey the request that, if the Board insists upon using "must" in place of "shall", it add somewhere in the prefatory materials to a Part (e.g., definitions) the statement that it is interpreting "must" as mandatory rather than discretionary.

Thanks for your consideration.

Jonathan C. Eastvold, Ph.D.
Rules Analyst III

Illinois General Assembly
Joint Committee on Administrative Rules
700 Stratton Building
Springfield IL 62706

During the COVID-19 emergency, please call or text my mobile at 217-816-9481
JonathanE@ilga.gov

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