

ILLINOIS POLLUTION CONTROL BOARD  
October 10, 1974

IN MATTER OF ADOPTION OF )  
REVISED PROCEDURAL RULES OF THE ) R 73-14  
POLLUTION CONTROL BOARD )

OPINION OF THE BOARD (by Mr. Dumelle):

Section 26 of the Environmental Protection Act provides that the Board may adopt such procedural rules as may be necessary to accomplish the purposes of the Act. Procedural rules pursuant to this authorization were adopted by the Board on October 16, 1970. The basic structure provided for general rules, rules relating to regulation hearings which were captioned "Non-adjudicative Proceedings", and specific sections dealing with procedures in enforcement, variance and permit proceedings. The last section contained canons of ethics with respect to financial disclosure, ex parte contacts and improper publicity. The foregoing Procedural Rules maintained for a period in excess of three years during which time the functions and procedures of the Board became more clearly defined and the appropriateness of the Rules with respect to the Board's function became subjectively ascertainable.

As in the case of every new administrative Agency, this was a period of testing and analysis to determine the appropriateness of the Rules as functional tools to facilitate and further the Board's operation. As would be expected, the Board's developmental process over the three-year period suggested the desirability of some modification in the Procedural Rules, although it is fair to say that the original enactment admirably served its purpose and the refinements that appear appropriate, do not represent any significant departure from the original structure or content.

On December 7, 1973, the Board in Newsletter #77 proposed revisions in the Procedural Rules and invited comment with respect to the proposal. As a result of this publication, comments were received which were highly informative and instructive to the Board in concluding what modifications should be made in the Rules. Particular recognition is paid to the following organizations, companies and individuals, whose input in this procedure were of extreme value.

Granite City Steel Company, Granite City, Illinois.  
Leah Hamilton of the law firm of Jenner & Block,  
Chicago, Illinois.  
Joseph S. Wright of the law firm of Hackbert, Rooks, Pitts,  
Fullagar and Poust, Chicago, Illinois.

James S. Lemna of the law firm of Lemna and Lee,  
Tuscola, Illinois.

Richard W. Cosby and Michael A. Benedetto, Jr. and  
other members of the Illinois Attorney General's  
Environmental Division.

John Parker, former member of the Illinois Pollution  
Control Board.

George E. Bullwinkel of the law firm of Price, Cushman,  
Keck, Mahin & Cate, Chicago, Illinois.

Staff members of the Illinois Environmental Protection  
Agency and all Administrative Assistants to members of  
the Pollution Control Board.

The basic structure of the Procedural Rules remain the same as originally adopted. The overriding objective of the revisions is to facilitate procedures with respect to motions, hearings and form of orders where experience over the period of the Board's existence had indicated improvements would be appropriate. The final form of Procedural Rules as revised was adopted on February 14, 1974. Newsletter #81 dated February 25, 1974 sets forth the changes that took place between the original proposal of December 7, 1973 contained in Newsletter #77 and the Rules as ultimately adopted. It should be noted that the Board in the February 14, 1974 revision did not incorporate those Rules necessary to accommodate the new NPDES program because at that time the Board's NPDES regulations had not been adopted. Reference to Newsletters #77 and #81 Supra. set forth in detail the significant modifications of the original Rules resulting from the revision as adopted.

Part I has been modified and improved to both simplify and specify certain aspects of the filing procedures inherent in the Board's operation, in some instances limiting what had previously been an inordinate amount of copies for filing, requiring proof of service, modifying the nondisclosure procedures and simplifying the obtaining of orders and opinions.

Part II has been re-captioned to reflect that it relates to the procedures involved in the Regulation hearings conducted by the Board, specifies that the hearings are in the nature of legislative hearings, and clarifies the function of the Hearing Officer with respect to Interrogatories and Subpoenas. Certain other changes relating to examination procedure, stenographic recording, time for submission of documents and related matters are provided.

Part III respecting enforcement procedures contains the most significant modifications. Improvement in procedures for adding additional parties is incorporated. Rule 304(c)(2) requires more detailed specification in a complaint than had previously been required. The role of the Hearing Officer is delineated in greater detail.

Rule 308 specifies for the first time the motion procedures to be followed, including provisions for service, hearings and rulings by the Board. Rule 308(c), as filed with the Secretary of State contained a typographical error in that the party filing a motion "shall not have the right to reply, except as permitted by the Hearing Officer or the Board." The word "not" was deleted in a retyping of the rule. Provisions respecting the grant of continuances by a Hearing Officer have been specified. The rules relating to discovery procedures have been modified and expanded, as have been the rules relating to submission of witness lists and procedures for the transcription of depositions. Rules have also been included to comply with statutory modification relating to publicly-owned or community-owned water facilities. Rule 318(c) contains a provision requiring the Hearing Officer to make a statement on the credibility of witnesses, a practice which has been followed but not previously incorporated in the Rules. Additional provisions provide for default procedures, for reimbursement of non-resident witnesses and modify the language with respect to penalties.

Rule 333 improves and amplifies the procedure in settlement of enforcement cases and requires that a hearing be conducted on all aspects of the proposed settlement, the preparation of a record and its submission to the Board for approval. Rule 334 contains for the first time procedures for motions made subsequent to final orders and provides that this form shall not be used in lieu of the variance procedure.

Part IV expands and details what must be set forth in a variance petition, modifies the time in which the Agency's recommendation must be filed, deletes the former provision authorizing the Board to appoint counsel to present a case against the petitioner when the Agency has recommended allowance and contains provisions regarding waiver of the 90-day rule in which a variance decision must be rendered, where continuances are sought and where the petition is amended. Procedures for post-order motions are likewise provided.

Former Rule 504 dealing with permits for nuclear facilities has been deleted. Part VI containing the canons of ethics remains unchanged.

Part VII is a new rule relating to judicial review of final orders of the Board pursuant to Supreme Court Rule 335 and the Administrative Review Act, including express reference to the rule provisions regarding stay of any Board order.

With new Rules to cover NPDES procedures, it is believed the revised Procedural Rules will adequately serve the purpose of enabling litigants and the Board to expeditiously dispose of the Board's business consistent with the direction of the Environmental Protection Act and due process requirements of the United States and Illinois Constitutions. Consistent with the policy which led to this revision, it is the intent of the Board to periodically review its Procedural Rules and to revise them when necessary.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion was adopted on the 10<sup>th</sup> day of October, 1974 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board