

ILLINOIS POLLUTION CONTROL BOARD
October 21, 2010

IN THE MATTER OF:)
)
REVISION OF MAILING ADDRESS OR) R10-22
SERVICE OF DOCUMENTS PROPOSED) (Rulemaking – Procedural)
AMENDMENT TO)
35 Ill. Adm. Code 101-304)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

Today the Board proposes for second notice amendments to the Board’s procedural rules. The amendment is unchanged from first notice, other than to reflect nonsubstantive changes requested by the Joint Committee on Administrative Rules (JCAR).

On June 2, 2010, the Illinois Attorney General’s Office (AG) proposed amendments to update the proper mailing address for the Division Chief of Environmental Enforcement at the Office of the Attorney General, and the Office of Legal Services at the Illinois Department of Natural Resources (IDNR). The proposal was accompanied by a statement of reasons (Reasons) and a motion to waive the signature requirement. The AG proposed these amendments so that the Board’s procedural rules will properly reflect the mailing addresses for the AG and IDNR. Reasons at 1. The AG asks the Board to waive the signature requirement because this proposal is a nonsubstantive regulation and the requirement is unnecessary. Reasons at 2.

On June 17, 2010, the Board accepted the procedural rules for first notice and granted the request to waive the signature requirement. The Board is not required to hold a public hearing to amend these procedural rules pursuant to Section 26 and 27 of the Act (415 ILCS 5/26 and 27 (2008)) and the AG did not request a public hearing. Further, the Board did not receive a request for a public hearing. The Board invited public comment on this proposal and accepted comments until the close of the first notice period. The rule was published on July 2, 2010 at 34 Ill. Reg. 8500 so the public comment period closed on August 16, 2010. The Board received no public comments on this rulemaking.

The Board will proceed to second notice with this amendment. The Board finds that proceeding to second notice with this procedural rule is appropriate and directs the Clerk to cause the rule to be filed with JCAR for second notice pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act (5 ILCS 100/5-40(c) (2008)).

ORDER

The Board directs the Clerk to file the following rule with the Joint Committee on Administrative Rules for second notice:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 101
GENERAL RULES

SUBPART A: GENERAL PROVISIONS

Section	
101.100	Applicability
101.102	Severability
101.104	Repeals
101.106	Board Authority
101.108	Board Proceedings
101.110	Public Participation
101.112	Bias and Conflict of Interest
101.114	Ex Parte Communications

SUBPART B: DEFINITIONS

Section	
101.200	Definitions Contained in the Act
101.202	Definitions for Board's Procedural Rules

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND
STATUTORY DECISION DEADLINES

Section	
101.300	Computation of Time
101.302	Filing of Documents
101.304	Service of Documents
101.306	Incorporation of Documents by Reference
101.308	Statutory Decision Deadlines and Waiver of Deadlines

SUBPART D: PARTIES, JOINDER, AND CONSOLIDATION

Section	
101.400	Appearances, Withdrawals, and Substitutions of Attorneys in Adjudicatory Proceedings
101.402	Intervention of Parties
101.403	Joinder of Parties
101.404	Agency as a Party in Interest
101.406	Consolidation of Claims
101.408	Severance of Claims

SUBPART E: MOTIONS

Section	
101.500	Filing of Motions and Responses
101.502	Motions Directed to the Hearing Officer
101.504	Contents of Motions and Responses
101.506	Motions Attacking the Sufficiency of the Petition, Complaint, or Other Pleading
101.508	Motions to Board Preliminary to Hearing
101.510	Motions to Cancel Hearing
101.512	Motions for Expedited Review
101.514	Motions to Stay Proceedings
101.516	Motions for Summary Judgment
101.518	Motions for Interlocutory Appeal from Hearing Officer Orders
101.520	Motions for Reconsideration
101.522	Motions for Extension of Time

SUBPART F: HEARINGS, EVIDENCE, AND DISCOVERY

Section	
101.600	Hearings
101.602	Notice of Board Hearings
101.604	Formal Board Transcript
101.606	Informal Recordings of the Proceedings
101.608	Default
101.610	Duties and Authority of the Hearing Officer
101.612	Schedule to Complete the Record
101.614	Production of Information
101.616	Discovery
101.618	Admissions
101.620	Interrogatories
101.622	Subpoenas and Depositions
101.624	Examination of Adverse, Hostile or Unwilling Witnesses
101.626	Information Produced at Hearing
101.628	Statements from Participants
101.630	Official Notice
101.632	Viewing of Premises

SUBPART G: ORAL ARGUMENT

Section	
101.700	Oral Argument

SUBPART H: SANCTIONS

Section

- 101.800 Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders
- 101.802 Abuse of Discovery Procedures

SUBPART I: REVIEW OF FINAL BOARD OPINIONS AND ORDERS

Section

- 101.902 Motions for Reconsideration
- 101.904 Relief from and Review of Final Opinions and Orders
- 101.906 Judicial Review of Board Orders
- 101.908 Interlocutory Appeal

101.APPENDIX A Captions

- 101.ILLUSTRATION A Enforcement Case
- 101.ILLUSTRATION B Citizen's Enforcement Case
- 101.ILLUSTRATION C Variance
- 101.ILLUSTRATION D Adjusted Standard Petition
- 101.ILLUSTRATION E Joint Petition for an Adjusted Standard
- 101.ILLUSTRATION F Permit Appeal
- 101.ILLUSTRATION G Underground Storage Tank Appeal
- 101.ILLUSTRATION H Pollution Control Facility Siting Appeal
- 101.ILLUSTRATION I Administrative Citation
- 101.ILLUSTRATION J General Rulemaking
- 101.ILLUSTRATION K Site-specific Rulemaking

101.APPENDIX B Appearance Form

101.APPENDIX C Withdrawal of Appearance Form

101.APPENDIX D Notice of Filing

101.APPENDIX E Certificate of Service

101.ILLUSTRATION A Service by Non-Attorney

101.ILLUSTRATION B Service by Attorney

101.APPENDIX F Notice of Withdrawal (Repealed)

101.APPENDIX G Comparison of Former and Current Rules (Repealed)

AUTHORITY: Implementing Sections 5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7 of the Environmental Protection Act (Act) [415 ILCS 5/5, 7.1, 7.2, 26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 40, 40.1, 40.2, 41, and 58.7] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27].

SOURCE: Filed with Secretary of State January 1, 1978; codified 6 Ill. Reg. 8357; Part repealed, new Part adopted in R88-5A at 13 Ill. Reg. 12055, effective July 10, 1989; amended in R90-24 at 15 Ill. Reg. 18677, effective December 12, 1991; amended in R92-7 at 16 Ill. Reg. 18078, effective November 17, 1992; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 446, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8743, effective June 8, 2005; amended in R06-9 at 29 Ill. Reg. 19666, effective November 21, 2005; amended in R07-17 at 31 Ill. Reg. 16110, effective November 21, 2007; amended in R10-22 at 34 Ill. Reg. _____, effective _____.

SUBPART C: COMPUTATION OF TIME, FILING, SERVICE OF DOCUMENTS, AND
STATUTORY DECISION DEADLINES

Section 101.304 Service of Documents

- a) **Service Requirements.** This Section contains the Board's general service requirements. However, the more specific Part for a proceeding type may contain additional requirements.
- b) **Duty to Serve.** Parties in Board adjudicatory proceedings are responsible for service of all documents they file with the Clerk's Office. Proof of service of initial filings must be filed with the Board upon completion of service.
- c) **Method of Service.** Service may be effectuated by U.S. Mail or other mail delivery service, in person, by messenger, or as prescribed in Section 101.302(d), except for service of enforcement complaints and administrative citations which must be made personally, by registered or certified mail, or by messenger service. Proof of service of enforcement complaints and administrative citations must be filed with the Board upon completion of service.
- d) **Affidavit or Certificate of Service.** A proceeding is subject to dismissal, and parties are subject to sanctions in accordance with Section 101.800 of this Part, if service is not timely made. Proof of proper service is the responsibility of the party filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties. A sample form of the affidavit of service and certificate of service is available at the Board's Offices (the locations of the Board's Offices are listed at 2 Ill. Adm. Code 2175.115) and may be obtained electronically at the Board's Web site.
- e) **Service of Amicus Curiae Briefs.** Any person who files an amicus curiae brief with the Board in any proceeding must serve copies of that brief on all parties in accordance with this Section.
- f) **Service of Comments of Participants in an Adjudicatory Proceeding.** Participants are required to serve their comments upon the parties to the proceeding. The Board will consider the comments as time and the Act or other applicable law allow.
- g) **Service on State Agencies.** Service must be at the addresses listed below unless a specific person has an appearance on file with the Board.
 - 1) **Service on the Illinois Environmental Protection Agency (Agency).** The Agency must be served at the following address:

Division of Legal Counsel

Illinois Environmental Protection Agency

1021 North Grand Avenue East

P.O. Box 19276
Springfield, IL 62794-9276

- 2) Service on Office of State Fire Marshal (OSFM). The OSFM must be served at:

Division of Petroleum and Chemical Safety
Office of the State Fire Marshal
1035 Stevenson Dr.
Springfield, IL 62703

- 3) Service on the Illinois Attorney General. The Office of the Attorney General must be served at:

Division Chief of Environmental Enforcement
Office of the Attorney General
~~188 West Randolph St., 20th Floor~~
100 West Randolph St., Suite 1200
Chicago, IL 60601

- 4) Service on the Illinois Department of Natural Resources (DNR) must be served at:

Office of Legal Services
Illinois Department of Natural Resources
~~524 S. Second St.~~
One Natural Resources Way
Springfield, IL 62702-1271 ~~62701-1787~~

- 5) Service on the Illinois Department of Transportation (IDOT). IDOT must be served at:

Office of Chief Counsel
DOT Administration Building
2300 S. Dirksen Parkway, Room 300
Springfield, IL 62764

- 6) Service on Region V of the United States Environmental Protection Agency (USEPA). USEPA Region V must be served at:

USEPA, Region V
77 West Jackson
Chicago, IL 60604

(Source: Amended at 34 Ill. Reg. _____, effective _____)

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 21, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board