

ILLINOIS POLLUTION CONTROL BOARD

January 8, 2015

IN THE MATTER OF:)
)
MANAGEMENT OF USED AND WASTE) R15-19
TIRES: PROPOSED AMENDMENTS TO) (Rulemaking - Land)
35 ILL. ADM. CODE 848)

ORDER OF THE BOARD (by C.K. Zalewski):

On December 22, 2014, the Illinois Environmental Protection Agency (Agency) filed a proposal to amend Part 848 of the Board’s rules governing the management of used and waste tires. Accompanying the proposal were a Statement of Reasons and a Motion for Acceptance of the proposal. *See* 35 Ill. Adm. Code 102.202 (Proposal Contents for Regulations of General Applicability).

The Agency states that amendments to Part 848 are in part required by Public Act 98-656, which, among other things, directs the Agency to propose certain revisions to the existing rules within six months after the effective date of that legislation (that is, June 19, 2014). SR at 1-2. *See* 415 ILCS 5/55 (d-5) (permit and other requirements for certain tire storage facilities to go into effect on July 1, 2016), 55.2(b-5) (imposing 6-month deadline on Agency, and requiring Board to adopt within 9 months after receipt of Agency proposal amendments to conform rules to Title XIV of the Environmental Protection Act (Act), as amended). According to the Agency, the remainder of the proposal is submitted in accordance with the general rulemaking provisions of the Act to “update the existing Part 848 rules to reflect lessons learned by the Agency in the 16 years since those rules were last amended,” and in the wake of “several major fires” at Illinois tire storage sites during that period. SR at 1-2. The Agency explains that it began stakeholder outreach on updates to Part 848 beginning in 2005, and made two additional rounds of outreach, in 2007 and November 2014. The Agency made changes in response to the ensuing comments from the regulated community and others. Moreover, the Agency explains why it declined to make certain changes that were proposed during the November 2014 outreach. SR at 2-6. The proposed amendments generally concern standards for exemption of a tire storage site from Part 848 requirements; modification of definitions in the rule; additional setback, permitting, and other tire management requirements; substitution of numerically-based regulatory triggers with weight-based triggers; recordkeeping requirements; and financial assurance. SR at 6-20. The proposal also notes that it includes several non-substantive changes to Part 848. SR at 21.

The Agency states that the proposal may impose new costs and “technical requirements” on regulated facilities. SR at 21. The Agency adds, however, that it has attempted to limit the most onerous regulatory burdens under the proposed amendments to “only those large facilities that pose the most significant risk.” *Id.* According to the Agency, such costs will “largely” be offset by increases in public health, safety, and welfare. *Id.*

The Board finds that the Agency has satisfied the content requirements of Section 102.202 of its procedural rules (35 Ill. Adm. Code 102.202), and therefore grants the motion for

acceptance and accepts the Agency's proposal for hearing. The Board directs its assigned hearing officer to schedule and proceed to hearing under the rulemaking provisions of the Act (415 ILCS 5/27, 28 (2012)) and the Board's procedural rules (35 Ill. Adm. Code 102). After conducting hearings on the proposal, the Board will determine whether to proceed to first notice.

With its proposal, the Agency submitted a motion to waive the requirement under the Board's procedural rules to file an original and nine copies of its regulatory proposal. Mot. at 1. The Agency notes that the Board has recently proposed amendments to the procedural rules that would generally allow a proponent to file an original and three copies of documents with the Board. Mot. at 1, citing Procedural Rule Amendments to Implement Electronic Filing and Allow for Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130, R14-21 (Nov. 6, 2014). The Board also proposed, the Agency maintains, allowing a proponent to file a compact disk of a document in a prescribed format in lieu of three paper copies, and to require a proponent to file three paper originals of any copyright-protected document that is proposed for incorporation by reference (IBR). Mot. at 2. The Agency states that its proposal seeks to IBR one copyright-protected document. Mot. at 2.

Accordingly, the Agency asks that the Board waive the current nine-copy filing requirement, and instead accept one copy of the rulemaking proposal; a compact disk containing the rulemaking proposal except the copyright-protected IBR standard; and three originals of the copyrighted standard proposed for IBR. Mot. at 2. No responses have been received, and waiver of objection is thus presumed under 35 Ill. Adm. Code 101.500(d).

While the Agency is correct about the filing requirements for copyrighted IBR documents that the Board has proposed in R14-21, the Agency misconstrues the proposed filing requirements for the remainder of a rulemaking proposal. Under the proposed rules, rulemaking proposals may generally be filed either in paper or through the Clerk's Office On-Line (COOL); but, if filed in paper, an original and three copies must be filed. *See* Procedural Rule Amendments, R14-21, slip op. at 39 (proposed Section 101.302(h)(1)(B)). The proposed rule allowing substitution of a compact disk of the document for the required three paper copies applies *only* to specified kinds of original documents required to be filed in paper under the proposed rules, *e.g.*, the original Agency record in a permit appeal. *See id.* (proposed Section 101.302(h)(2)). Thus, to submit only an original of its rulemaking proposal, the Agency would have to obtain a waiver from the Board under the proposed filing requirements, too.

The Board is not inclined, however, to deny a waiver in this particular instance. The Agency's proposal is not lengthy and no objection to the motion has been received. Accordingly, under the circumstances of this case, the Board grants the Agency's motion to waive the filing requirements.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 8, 2015, by a vote of 4-0.

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

John T. Therriault, Clerk
Illinois Pollution Control Board