

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|                                |   |              |
|--------------------------------|---|--------------|
| IN THE MATTER OF:              | ) |              |
|                                | ) | R15-20       |
| PROCEDURAL RULES AMENDMENTS:   | ) | (Rulemaking) |
| PROPOSED AMENDMENTS TO 35 ILL. | ) |              |
| ADM. CODE 101, 103, 106, 108   | ) |              |

**NOTICE OF FILING**

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board Illinois EPA's APPEARANCE and ILLINOIS EPA'S COMMENTS for the above captioned rulemaking, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

DATED: April 17, 2015

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**APPEARANCE**

The undersigned hereby enters her appearance as an attorney on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

Joanne M. Olson #6293500  
Illinois Environmental Protection Agency  
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**ILLINOIS EPA'S COMMENTS**

NOW COMES the Illinois Environmental Protection Agency, (Illinois EPA or Agency) by and through its counsel, and hereby submits its first-notice comments for the above captioned rulemaking.

**I. Background**

The Illinois Pollution Control Board (Board) issued its first-notice order and opinion in the above captioned rulemaking on February 19, 2015. The Board proposes amendments to its service requirements and administrative citation rules. In particular, the Board proposes adding a process to Part 108, the administrative citation rules, for the Agency to issue administrative citations under the Public Water Supply Operations Act (PWSO Act), 415 ILCS 45. The PWSO Act, recently amended on August 4, 2014, allows the Illinois EPA to issue administrative citations to a Responsible Operators in Charge (ROINC) for failing to submit required reports and monitoring results. Newly added Section 23.1 sets forth a process the Agency must follow when issuing administrative citations to ROINC. Currently, Part 108 only provides a process for administrative citations issued by the Agency or delegated unit of state or local government pursuant to Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1.

The Board's proposed amendments appeared in the *Illinois Register* on March 6, 2015. See 39 Ill. Reg. 13276. The first-notice comment period expires on or about April 20, 2015. The Agency appreciates the Board's proposed amendments to Part 108. The Agency's comments are offered to strengthen and support these proposed amendments.

## **II. Electronic Products Recycling and Reuse Act**

The Electronic Products Recycling and Reuse (EPRR) Act, 415 ILCS 150, is enforced through the use of administrative citations. 415 ILCS 150/20(a). The process for issuing administrative citations under the EPRR Act is similar to the process under the Environmental Protection Act. The major difference between the EPRR Act the Environmental Protection Act is that under the EPRR Act, the Agency is not required to file the administrative citation with the Board as is required under Section 31.1(c) of the Act. The EPRR Act has different deadlines and service requirements for administrative citations than required by the PWSO Act. The Agency believes that administrative citations issued under the EPRR Act should also be addressed in Part 108. Therefore, the Agency requests the Board amend its procedural rules in a manner that also includes administrative citations under the EPRR Act.

## **III. Reorganization to Accommodate Requirements under the EPRR Act**

Section 108.202 is entitled "Service of Citation/Filing of Citation with the Board". This section sets forth the following: 1) required service; 2) required contents of the administrative citation; and 3) required filings with the Board. With the Board's proposed amendments, this section covers these three topics for administrative citations issued under two different acts. Now the Agency proposes adding administrative citations issued under a third act, the EPRR Act.

The Agency recommends breaking up this section. Instead of trying to cover three different topics for three different types of administrative citations in a single section, the Board may consider giving each type of administrative citation its own section. This will help clarify the different service requirements and administrative citation content requirements for the three different acts. Therefore, the Illinois EPA proposes the following:

**Section 108.200 Administrative Citations under the Environmental Protection Act**

**Section 108.201 Administrative Citations under the PWSO Act**

**Section 108.202 Administrative Citations under the EPRR Act**

Within each of these sections, the Board could specify who can issue the administrative citation, the required contents of the administrative citation, how the administrative citation must be served, and when Illinois EPA must file a copy of the administrative citation with the Board. The Agency believes this change will provide clarity for existing types of administrative citations, and provides the Board with flexibility to specify different requirements for each type of administrative citation.

The Board should also remove the specific references to the acts that are scattered throughout Part 108. For example, in proposed Section 108.204(a), the Board states the requirements for who may file the petition to contest twice, one with a reference to the Act and one with a reference to the PWSO. The procedural requirement, however, is the same for both acts. To accommodate the EPRR and future acts that may provide for Administrative citations, the Agency recommends deleting these references. To illustrate this point, the Agency proposes double strike through and double underline amendments below:

### Section 108.204 Filing Requirements for Petition to Contest

- a) Who May File. The AC Recipient may file with the Board a petition to contest the AC. ~~For an AC issued pursuant to Section 31.1 of the Act, the~~The AC Recipient must be named as the respondent and the Agency or Delegated Unit must be named as the complainant ~~in accordance with Section 31.1(d)(2) of the Act. For an AC issued pursuant to Section 23.1 of the PWSO Act, the AC Recipient must be named as the respondent and the Agency must be named as the complainant in accordance with Section 23.1(d) of the Act.~~
- b) Time to File. The petition to contest must be filed with the Board within 35 days after the date of the service of the AC ~~as required by Section 31.1(d)(1) of the Act and Section 23.1(d) of the PWSO Act.~~
- c) Additional Requirements. Additional filing and service requirements are set forth at 35 Ill. Adm. Code 101.Subpart C.

This type of amendment can be made in the following sections: 108.300(b) and 108.402.

### III. PWSO Act

In Section 108.206, the Board sets forth the reasons why an administrative citation may have been improperly issued. In proposed subsection (a), the Board adds: "for a community water supply, is not the Responsible Operator in Charge." This language is confusing because an AC recipient will never be a community water supply, and a community water supply will never be a Responsible Operator in Charge. The Agency proposes dividing subsection up into two, as follows:

- a) For petitions to contest administrative citations filed under the Act, theThe AC Recipient does not own the property;
- b) For petitions to contest administrative citations filed under the PWSO Act,  
the AC Recipient is not the Responsible Operator in Charge.

The Agency also recommends the Board add a subsection which contains reasons why the administrative citations was improperly issued under the EPRR Act.

WHEREFORE, the Illinois EPA respectfully submits these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
Joanne M. Olson  
Assistant Counsel  
Division of Legal Counsel

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**CERTIFICATE OF SERVICE**

Joanne M. Olson, Assistant Counsel for the Illinois EPA, herein certifies that she has served a copy of the foregoing NOTICE OF FILING; APPEARANCE; and ILLINOIS EPA'S COMMENTS upon persons listed on the Service List by placing a true copy in an envelope duly addressed bearing proper first class postage in the United States mail at Springfield, Illinois on - April 17, 2015, or by sending an email from my email account ([joanne.olson@illinois.gov](mailto:joanne.olson@illinois.gov)) to the email addresses designated on the Service List with a 7 page document attached on or before 5:00 pm on April 17, 2015.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Joanne M. Olson  
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