



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
PROCEDURAL RULES AMENDMENTS: ) R15-20  
 ) (Rulemaking- Procedural)  
PROPOSED AMENDMENTS TO 35 ILL. )  
ADM CODE 101, 103, 104, 106, 108 )

**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/Sara G. Terranova  
Sara G. Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: 7/20/15  
1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) R15-20  
PROCEDURAL RULES AMENDMENTS: ) (Rulemaking- Procedural)  
PROPOSED AMENDMENTS TO 35 ILL. )  
ADM CODE 101, 103, 104, 106, 108 )

**ILLINOIS EPA'S COMMENTS**

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

**I. Background**

The Illinois Pollution Control Board (Board) adopted a first-notice order and opinion on February 19, 2015. The Board proposed amendments to its procedural rules for out-of-state attorneys, service of filings administrative citations. The Agency provided comments to the Board on April 17, 2015 regarding the administrative citation amendments. Based on the Agency's public comment and recent legislative amendments to the Illinois Environmental Protection Act (Act), the Board made substantive changes to its proposed amendments. The Board again proposed amendments for first-notice publication on May 7, 2015. The Board now proposes amendments to its procedural rules for out-of-state attorneys, service of filing, variance notice, and administrative citations. In particular, the Board proposes to update 35 Ill. Adm. Code 104.214 to reflect amendments to Section 37(a) of the Act. Public Act 98-0822 amends Section 37(a) of the Act to impose on a variance petitioner notice requirements previously assigned to the Agency. P.A. 98-0822, eff. Aug. 1, 2014. Under amended Section 37(a), a variance petitioner is required to: (i) pay a filing fee; (ii) promptly give written notice of the variance petition to any person in the affected county who requests notice of variance petitions,

the affected county's State's attorney, the affected county's Chairman of the County Board, and to each member of the General Assembly from the affected legislative district; and (iii) publish a single notice of the variance petition in a newspaper of general circulation in the affected county. 415 ILCS 5/37(a).

The Board's proposed amendments appeared in the *Illinois Register* on June 5, 2015. See 39 Ill. Reg. 7849. The first-notice comment period expires on July 20, 2015. The Agency appreciates the Board's proposed amendments to Section 104.214. The Agency's comments are offered to strengthen and support these proposed amendments.

## **II. Agency Investigation and Recommendation**

As part of the Agency's investigation and recommendation of a petition for a variance, the Agency is required to consider the views of persons who might be adversely affected by the grant of the variance.<sup>1</sup> 415 ILCS 5/37(a) and 35 Ill. Adm. Code 104.216. Previously, the Agency included language in the notice soliciting the views of anyone adversely affected by the variance. As the petitioner is now responsible for providing public notice, the Agency recommends amending Section 104.214(e)(5) to require that the petitioner include in such notice a statement that the Agency is seeking the views of persons who may be adversely affected by the variance. In addition, to provide the Agency sufficient time to review and consider all comments provided when preparing its recommendation, the Agency recommends incorporating a deadline by which all comments to the Agency must be received. Therefore, the Agency proposes the following:

### **Section 104.214 Notice of Petition**

---

<sup>1</sup> 104.216a states "[U]pon receipt of the variance, the Agency shall... consider the views of persons who might be adversely affected by the grant of the variance."

104.216b1 provides that the Agency recommendation to the Board must include "[A] description of the efforts made by the Agency to ... ascertain the views of persons who might be affected [by the variance] and a summary of the views so ascertained.

- e) All notices required by this Section must include the following:
- 1) The street address of the facility or pollution source, and if there is no street address, then the legal description or the location with reference to any well known landmark, highway, road, thoroughfare or intersection;
  - 2) A description of the requested relief;
  - 3) An indication that any person may request a hearing by filing with the Board a written objection to the grant of the variance within 21 days after the publication of the Agency's notice, together with a written request for hearing;
  - 4) The Clerk of the Board's address and phone number, the Board's website address, and a statement that a copy of the variance petition may be obtained through the Clerk's Office or COOL, located on the Board's website;
  - 5) A statement that the Agency is preparing a recommendation and seeking the views of persons who may be adversely affected by the variance. All comments and inquiries should be addressed to, the date on which the recommendation is to be filed, and the name, address, e-mail address, and telephone number of the Agency employee responsible for the recommendation within 21 days after publication of the Petitioner's notice. The notice must also include the date on which the recommendation is to be filed, and the name, address, email address, and telephone number of the Agency employee responsible for the recommendation;
  - 6) A statement that a hearing may be held after the filing of the recommendation and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which the comments must be mailed;
  - 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions that are protected from disclosure under 35 Ill. Adm. Code 130, and that procedures are available whereby disclosure may be sought by the public;
  - 8) A statement that variances may be granted pursuant to Section 35 of the Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought; and
  - 9) Any additional information considered necessary or proper.

### III. Clean-up to Reflect Updates in Section 104.214

Section 104.224 provides mechanisms for objections to a petition, written comments, and a request for a hearing. Both objection to the grant of a variance and a request for a hearing must be filed within 21 days after the publication of the notice. To reflect that the notice requirements for a variance petition are now the responsibility of the variance petitioner and not the Agency, the Agency recommends the following language:

#### Section 104.224 Objections to Petition, Written Comments and Request for Hearing

- a) A person who files an objection, request for hearing, or comment is a "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- b) Except as provided in subsection (e) of this Section for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the Petitioner's Agency's notice pursuant to Section 104.214 of this Part, a written objection to the grant of variance. The Clerk will serve a copy of the objection on the petitioner, the Agency, the hearing officer, and any joined parties in accordance with 35 Ill. Adm. Code 101.304(c).
- c) Any person may also file a written request for hearing. The written request must be filed within 21 days after the publication of the Petitioner's Agency's notice pursuant to Section 104.214 of this Part in order for a hearing to be held in accordance with Section 104.236 of this Part and 35 Ill. Adm. Code 101.Subpart F.
- d) Any person may file written comments in a variance proceeding. If a hearing is held, public comments must be filed within 14 days after the close of the hearing unless the hearing officer specifies a different date. If there is no hearing, comments must be filed no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm. Code 101.628(c)(1).)
- e) In RCRA variances, subsections (b) and (c) of this Section do not apply. However, persons may file written comments within 45 days after the Agency files its recommendation.

In addition, Section 104.234 provides instances in which the Board will order a hearing on a variance petition. Again to reflect that the notice requirements for a variance petition are

now the responsibility of the variance petitioner and not the Agency, the Agency recommends the following language:

**Section 104.234 Hearing**

The Board will order a hearing on a variance petition if:

- a) A hearing is requested by the petitioner at the time of initial filing on the associated form or in writing, which is filed and served in accordance with 35 Ill. Adm. Code 101.Subpart C;
- b) A hearing is requested in a response or amended petition;
- c) *The Board, in its discretion, concludes that a hearing would be advisable* [415 ILCS 5/37(a)];
- d) *The Agency or any other person files a written objection to the grant of such variance within 21 days after the publication of the Petitioner's ~~Agency's~~ notice pursuant to Section 104.214 of this Part, together with a written request for hearing* [415 ILCS 5/37(a)];
- e) The request concerns a RCRA variance.

WHEREFORE, the Illinois EPA respectfully submits these comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: /s/Sara G. Terranova  
Sara G. Terranova  
Assistant Counsel  
Division of Legal Counsel

DATED: 7/20/15

1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

