

McGill, Richard

From: McGill, Richard
Sent: Friday, March 10, 2017 3:59 PM
To: 'JonathanE@ilga.gov'
Subject: JCAR questions on 35 IAC 101 - 130

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MAR 10 2017

STATE OF ILLINOIS
Pollution Control Board

Good afternoon, Jonathan:

Below, you'll find in red font our responses to your questions. For convenience, I've repeated your questions before each response.

Please let me know your thoughts. Thank you and have a great weekend.

1. 101.300(d)(3): "...in the event of a timely **filed** motion for reconsideration **filed**..." → Is there any way to make this less redundant?

Yes. The redundant language also appears in (d)(2). We suggest eliminating the redundancy (and some other wordiness) in the existing rule text of both (d)(2) and (d) (3) as follows: "If a Or, in the event of a timely filed motion for reconsideration is timely filed under pursuant to..."

2. 101.304(d)(1)(A), first sentence: "...signed by the filing party, stating..." → Could we change this to "...signed by the filing party, stating the following: ..."?

We suggest amending the existing rule text of (d)(1)(A) as follows:

"An affidavit or certificate of service, signed by the filing party, stating must accompany the document being filed with the Clerk. The affidavit or certificate of service must state that service has been initiated, but not yet completed, and providing the following: the date, the time by when, and the place where; the document was provided to the person making personal delivery; the address appearing on the envelope or package containing the document; and a statement that the delivery charge was prepaid; and"

3. 104.200(b)(2): We are somewhat confused about what you are trying to say in this paragraph, and thus the best way to punctuate it. Any input?

We suggest not amending the existing rule text of (b)(2), which reads as follows:

"If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, Underground Injection Control (UIC), or National Pollutant Discharge Elimination System (NPDES) program shall not be stayed. The Board may hold a hearing upon said

petition 5 days from the date of notice of such hearing or thereafter. [415 ILCS 5/38(b)]"

4. 104.208(c):

- a. Do you want to add CFR citations for the UIC program?
- b. To what does "thereto" refer?

Your questions here highlight areas that we can improve throughout 104.208. We suggest amending the existing rule text of 104.208 as follows:

- "a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code.Subtitle B, Ch. I "Air Pollution", must indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et seq.) and the federal regulations adopted under the CAA (40 CFR 50-99) pursuant thereto. If granting a variance would require revising ~~revision of~~ the State Implementation Plan, the petition must indicate whether the requirements of Section 110(a) of the CAA (42 USC 7410(a)) and 40 CFR 51 will be satisfied.
- b) All petitions for variances from Title III of the Act, from 35 Ill. Adm. Code.Subtitle C, Ch. I "Water Pollution", or from water pollution related requirements of any other Title of the Act or Chapter of the Board's regulations, must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards, and any other federal regulations adopted under the CWA (40 CFR 110, 112, 117, 122, 125, 129, 136, 401-471, and 503), and of any area-wide waste treatment management plan approved by the Administrator of USEPA under pursuant to Section 208 of the CWA (33 USC 1288).
- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code.Subtitle F, Ch. I "Public Water Supplies", and to the extent applicable, from Title V of the Act or from 35 Ill. Adm. Code.Subtitle D, Ch. I "Mine Related Water Pollution", must indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 USC 300(f) et seq.), the federal National Primary Drinking Water Regulations (40 CFR 141), and the UIC Underground Injection Control Program (42 USC 300h et seq.), and the other federal regulations adopted under the UIC Program (40 CFR 144-148) pursuant thereto.
- d) All petitions for variances from Title V of the Act or from 35 Ill. Adm. Code.Subtitle G, Ch. I "Waste Disposal" must indicate whether the Board may grant the requested relief consistent with RCRA (42 USC 6901 et seq.), and the federal regulations adopted under RCRA (40 CFR 256-258, 260-268, 273, 279, and 280) pursuant thereto.
- e) For all petitions for RCRA variances, the petitioner must should consult the federal RCRA rules that which contain procedures that are referred to as

"Variances" (40 CFR 260,~~261, 262, 263, 264, 265, 266, 267, 268 and 270~~). The petitioner must ~~should~~ consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed."

5. 105.302(f), 3rd line: Do you mean something different by "CAAPP application" than you do by "CAAPP permit application"?

No. Section 39.5 of the Act defines "CAAPP application" as "an application for a CAAPP permit" (415 ILCS 5/39.5(1)) and uses the term extensively. 105.302(a) makes Section 39.5's definition applicable to Subpart C. We think that the statutory term and its meaning is familiar to those concerned, but in an abundance of caution, we emphasize that the Agency's "record of the CAAPP application" must include the "CAAPP permit application" itself.

6. 105.400(a) and 105.402: Can we change "Sections 57.1 et seq." to "Title XVI"?

Yes to both: "...made under Title XVI ~~pursuant to Sections 57.1 et seq.~~ of the Act..."

7. 106.400(b)(1), 2nd line: "holder of the CAAPP" → Should this be "holder of the CAAPP permit" or "holder of the CAAP"? I'm guessing the former, but had to ask.

Yes, for (b)(1) and (b)(2) as well: "...holder of the CAAPP permit will be named as respondent."

8. 106.710(e)(2), 4th line: "less than 100 persons" → Can we please say "fewer than 100 persons"?

Yes: "...if fewer less than 100 persons attended the public hearing..."

9. 106.800(a): Since the statutory text and citation already point the reader to 415 ILCS 92.5(e), can we delete "as provided in Section 5(e) of the Regulation of Phosphorus in Detergents Act"?

Yes: "...~~by weight as provided in Section 5(e) of the Regulation of Phosphorus in Detergents Act~~ [415 ILCS 92/5(e)]."

10. 106.904(d): Would it be possible to redraft this subsection so it is a bit clearer?

We suggest amending the existing rule text of (d) as follows:

"For demonstrations under Section 106.914(a), a plan, including soil testing, in accordance with subsections (e) and (f) ~~and~~ no less than once every five years, to show that applying when application of landscape waste or composted landscape waste at rates greater than an agronomic rate of 20 tons per acre per year will be, or will continue to be, beneficial to the site's soil characteristics or crop needs. The ~~Such a~~ plan must specify any soil parameters to be analyzed, such as soil organic content and nutrients, and any limits on them."

11. 106.1110, definition of CWA: Is the legislative history necessary or would the USC citation suffice?

The USC citation suffices:

~~“CWA’ means the Federal Water Pollution Control Act, as amended, (33 USC 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972, as amended by the Clean Water Act, Public Law 95-217, enacted December 12, 1977, as amended).”~~

12. 108.300(d): Would it be possible to fix this (I assume by striking the subsection (d) label and adding a comma, but in whatever way you think appropriate)?

Yes, as you suggest, the existing rule text should be amended as follows:

- c) The hearing will be held and conducted in accordance with 35 Ill. Adm. Code 101.Subpart F;
- d) ~~Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).~~

13. 130.104: Would it be possible to add a definition of “article” to this Part?

No need. “Article” is defined at 101.202 (quoting the Act’s definition), which is cross-referenced in 130.104.

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 Please consider the environment before printing this email

From: McGill, Richard
Sent: Wednesday, March 08, 2017 11:24 AM
To: 'Eastvold, Jonathan C.' <JonathanE@ilga.gov>
Subject: RE: JCAR questions on 35 IAC 101 - 130

Good morning, Jonathan.

We started looking at these yesterday and are continuing to do so. I’ll be in touch. Thank you.

Best regards,

Richard

Richard R. McGill, Jr.
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 Please consider the environment before printing this email

From: Eastvold, Jonathan C. [<mailto:JonathanE@ilga.gov>]
Sent: Tuesday, March 07, 2017 11:12 AM
To: McGill, Richard <Richard.McGill@illinois.gov>
Subject: [External] JCAR questions on 35 IAC 101 - 130

Here's our latest list of questions:

1. 101.300(d)(3): "...in the event of a timely **filed** motion for reconsideration **filed**..." → Is there any way to make this less redundant?
2. 101.304(d)(1)(A), first sentence: "...signed by the filing party, stating..." → Could we change this to "...signed by the filing party, stating the following: ..."?
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11. 106.1110, definition of CWA: Is the legislative history necessary or would the USC citation suffice?
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13. 130.104: Would it be possible to add a definition of "article" to this Part?

Thanks so much for your time and consideration.

Sincerely,

Jonathan Eastvold

Jonathan C. Eastvold, Ph.D.
Rules Analyst II

****PC#1****

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