

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2018

IN THE MATTER OF)	
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AMENDMENTS TO 35 ILL. ADM. CODE)	R18-30
SUBTITLE O: RIGHT TO KNOW)	(Rulemaking – Right to Know)

Proposed Rule. Proposal for Public Comment.

ORDER OF THE BOARD (by B.K. Carter):

The Board opened this docket under Part 102 of its procedural rules (35 Ill. Adm. Code 102, Subpart B) and Sections 27 and 28 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/27, 28 (2016)) to amend the Board’s Right-to-Know rules (35 Ill. Adm. Code 1600). Today, the Board proposes amendments for public comment. In this order, the Board provides background on this rulemaking’s objectives, discusses proposed amendments, requests comment on eight specific questions, and concludes with information on how the rulemaking will proceed.

BACKGROUND

This proposal is part of the Board’s review of its rules started in the summer of 2016. The amendments are non-substantive and intended to remove obsolete, repetitive, confusing, or otherwise unnecessary rule language. The amendments are also consistent with Governor Rauner’s Executive Order 2016-13, which directs State agencies to review and update their administrative rules as part of the Cutting the Red Tape Initiative. The Board’s Right-to-Know (RTK) rules were adopted in 2006 (Standards and Requirements for Potable Water Well Surveys and for Community Relations Activities Performed in Conjunction with Agency Notices of Threats from Contamination: New 35 Ill. Adm. Code 1600, R06-23 (Sept. 7, 2006)) and updated in 2015 to reflect subsequent statutory and regulatory amendments (Standards and Requirements for Potable Water Well Surveys and for Community Relations Activities Performed in Conjunction with Agency Notices of Threats from Contamination: Proposed Amendments to 35 Ill. Adm. Code 1600, R14-23 (Feb. 19, 2015)). Although the RTK rules were recently updated in 2015, many provisions went unaddressed and, therefore, have not undergone comprehensive review since their adoption.

PROPOSED AMENDMENTS

The Board’s RTK rules are contained within a single part, Part 1600, of the Illinois Administrative Code’s Title 35: Subtitle O (35 Ill. Adm. Code 1600). The RTK rules generally address soil and groundwater contamination threatening potable water supply wells and the response action required in handling these threats. The rules include definitions; minimum standards for performing potable water supply well surveys; and minimum standards for performing community relations activities.

The Board's proposed amendments remove redundant or unnecessary words and phrases, replace outdated language, and reorganize sections and sentence structure for clarity. The proposed amendments include breaking down excessively long sections into smaller subsections to improve functionality. Sections with more extensive changes are specifically addressed below.

In Section 1600.100, the Board separates the rule text into smaller subsections for clarity. The Board removes the language of subsection (b) entirely because its reference to Section 25d-3(a) and (c) of the Act is redundant. The Board re-designates subsection (c) and divides it into subsections (1) and (2) for clarity. It also strikes reference to potable water supply well surveys, which are covered in subsection (a). The Board proposes separating the last sentence of this section to create subsection (c).

In Section 1600.200, the Board proposes separating the single paragraph into two subsections and, because it is more appropriately covered in Section 1600.210, striking the following sentence: "The effects of soil contamination on groundwater contamination are evaluated as the soil component of the groundwater ingestion exposure route using modeling as referenced in this Subpart B."

In Section 1600.205, the Board simplifies the text by removing wordiness. The Board proposes removing the last sentence in subsection (a) regarding setback zones and regulated recharge areas because it is more appropriately covered under the potable water supply well survey procedures in Section 1600.210. Subsection (b) is stricken because it is outdated and no longer necessary.

In Section 1600.210, the Board separates subsections (a) and (c) into smaller, simpler parts. In subsection (c), the Board proposes reorganizing the text, because the preceding two sentences make its points sufficiently clear, striking the following sentence: "The extent of modeled groundwater contamination must be determined using the procedures of 35 Ill. Adm. Code 742 or another model or methodology approved by the Agency.". The contents of subsection (e)(2) are moved under (e)(1), creating subsection (e)(1)(C) to be with the other provisions addressing the required contents of maps.

Section 1600.300(a) is separated into two additional subsections to limit large blocks of text where information could be easily overlooked. Subsection (b) becomes subsection (d) due to the division of the text in the preceding subsections. The Board strikes the following sentence because it is redundant: "This Subpart C establishes minimum requirements for community relations activities when such activities are to be performed in place of a notice by the Agency in accordance with subsection (a) of Section 25d-3 of the Act."

In Section 1600.305(b), the proposed amendments include clarifying language to better identify when an authorized party needs to provide a potential contamination notice and implement community relations activities. The Board proposes referring to the Agency's written notice as a "letter" throughout this subsection to eliminate using different words for the same thing. For example, the current text first mentions that the Agency "notifies the person in writing that a notice must be issued." The Agency's writing is subsequently referred to as a "written

notice” and then the “Agency’s offer.” Consistent use of the word “letter” throughout this subsection eliminates potential confusion.

In Section 1600.310(b)(1) and (b)(3), the Board removes references to distributing the notices and fact sheets and re-designates them as subsection (c). This removes wordiness and creates a distinction between the required contents of these documents and the distribution procedures. This change emphasizes distribution more than placing it within the requirements for notices and fact sheets where it could be easily overlooked. In addition, subsection (c) concerning missing information in a fact sheet has been moved under subsection (b)(3) on general requirements for preparing a fact sheet. Further, subsection (b)(3) is divided into two subsections - contents and unavailable information - for clarity and functionality. The rule text is renumbered accordingly.

The changes in Section 1600.315(b) mimic those made in Section 1600.310(b) due to the similar nature of these two sections. For instance, in Section 1600.315(b)(1), (b)(2), and (b)(3), references to distributing the notices, community relations plans, and fact sheets were removed and relocated under a separate subsection, subsection (c), to remove wordiness and create a distinction between the required contents of these documents and the distribution procedures. The remaining changes within this Section follow Section 1600.310(b).

The Board proposes minor changes in Section 1600.320 to reflect changes in technology since this rule’s adoption, such as changing the reference “World Wide Web Site” to simply “website.”

In Section 1600.325, changes are limited to improving sentence structure for clarity and removing wordiness.

Minor changes are proposed for Section 1600.330. In the first sentence of subsection (b), the Board proposes replacing the phrase “notice, contact list, fact sheet or CRP [community relations plan]” with “document under this Section” because the title and subsection (a) of Section 1600.330 mention these documents. In subsection (b)(3), because the information is covered within the cited rules, the Board strikes the following as unnecessary: “including, but not limited to, any explanation of why specified information is unavailable at the time of the submission of the fact sheet and an estimate of when the missing information will be supplied in a revised fact sheet. Lastly, the contents of subsections (c)(2) and (c)(3) are combined into a single subsection, subsection (c)(2), because both subsections concern potential violations of the RTK rules.

Finally, in Section 1600.335(a), the reference to Section 1600.330(f) is corrected to subsection (g).

PUBLIC COMMENT ON SPECIFIC QUESTIONS

To aid the Board in this rulemaking, the Board requests public comments on rule sections in Part 1600 noted below. First, regarding the proposed amendments to Section 1600.305(b) and the use of the word “letter,” the Board requests the Agency to comment on the following:

1. *When notifying an authorized party to provide contamination notices, does the Agency provide notice electronically or by a physical letter sent via U.S. Mail or third-party carrier?*
2. *If electronic communication is appropriate, does the Agency consider the proposed term “letter” to adequately address both physical and electronic communications or is there a better term?*

Second, Sections 1600.310 and 1600.315 both mention “affected and potentially affected properties” followed by a long parenthetical that lists examples of these. The Board asks for comment on:

3. *Are the parentheticals following “affected and potentially affected properties” necessary?*
4. *If so, is it appropriate to remove the parentheticals within the text and add to Section 1600.110 a definition for “affected and potentially affected properties” that would include these examples?*

Third, Section 1600.330(c) provides that Agency notification approving, approving with modifications, or disapproving an authorized party’s submitted documents must be made by certified mail or registered mail. The Board asks for comment on:

5. *Does the Agency provide electronic notification or are these notifications physically mailed?*

Fourth, Appendix A includes the contents of a model CRP to aid an authorized party in creating a CRP. Much of the Appendix, however, reiterates the rules without providing an example of a plan. For instance, number four of the Appendix lists the individuals for a contact list but is identical to the list in Section 1600.315(b)(2)(d). The Board asks for comment on:

6. *Is there an example of a CRP that could be made part of Appendix A to better aid authorized parties when creating a CRP?*
7. *If so, are CRPs public and easily accessible? Please explain where and how a CRP can be located.*

Lastly the Board asks for comment on:

8. *Is there any proposed revision that would change the rule’s meaning or application?*

CONCLUSION

The Board proposes these amendments to the RTK rules for public comment, without submitting them to the *Illinois Register* for first-notice publication. The proposed amendments appear in the addendum to this order. The Board invites public comments on all aspects of the proposal, particularly the eight questions above. The Board intends to hold two hearings on the proposal, by videoconference in Chicago and Springfield. See 35 Ill. Adm. Code 101.600(b),

102.114. Interested persons are encouraged to contact the Clerk's Office (Don.Brown@Illinois.Gov) to be added to this docket's notice list.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2018, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board