

ILLINOIS POLLUTION CONTROL BOARD
June 20, 2019

IN THE MATTER OF)
)
AMENDMENTS TO 35 ILL. ADM. CODE) R18-29
SUBTITLE M: BIOLOGICAL MATERIALS) (Rulemaking – Biological Materials)

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by A. Palivos):

Today the Board proposes amendments to its potentially infectious medical waste (PIMW) rules at 35 Ill. Adm. Code 1420, 1421, and 1422 for second notice. 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)). The Board’s PIMW rules have not been amended since their adoption in 1993 (Potentially Infectious Medical Waste; Treatment, Storage, and Transfer Facilities and Transportation, Packaging, and Labeling: 35 Ill. Adm. Code 1420, 1421, & 1422, R91-20 (Jun. 17, 1993)), despite the enabling statute (415 ILCS 5/56 – 56.7 (2016)) having been substantively amended three times during the ensuing 25 years (P.A. 92-574 (eff. June 26, 2002); P.A. 94-641 (eff. Aug. 22, 2005); *and* P.A. 99-82 (eff. July 20, 2015)).

In this order, the Board provides the procedural history of the hearings and public comments, discusses the proposed amendments on second notice, and then discusses the substance of the public comments. The proposed amendments appear as an addendum to this order.

PROCEDURAL HISTORY

The Board proposed amendments to its PIMW rules for public comment on May 10, 2018. The Board held two public hearings on September 11, 2018 (Tr.1) and October 17, 2018 (Tr.2), by videoconference between the Board’s Chicago and Springfield offices. Al Burson, corporate director of incinerator compliance for Stericycle, Inc. gave testimony at the first public hearing. Tr.1 at 6-14. A representative for Stericycle, Inc. gave spoken public comment at the second public hearing. In addition, the Board received four written comments. On September 13, 2018, the Board docketed an email exchange between the court reporter and the Board (PC 3). The Board received written comments on the amendments from Stericycle, Inc. (Stericycle) (PC 1) and the Illinois Environmental Protection Agency (IEPA or Agency) (PC 2) prior to the first hearing. The Board also received written comments from the Illinois Health and Hospital Association (IHA) (PC 4) after the second hearing.

The Board is required to request the Department of Commerce and Economic Opportunity (DCEO) conduct a study of the economic impact of certain proposed rules prior to their adoption under Section 27(b) of the Act. 415 ILCS 5/27(b) (2016). The Board sent the request to DCEO on May 10, 2018. The Board received no reply from DCEO.

On February 14, 2019, the Board adopted a first notice proposal. The first notice amendments were published in the Illinois Register on March 1, 2019 (43 Ill. Reg. 2966, 2983, 2994), which a 45-day public comment period. During that period, the Board received public comments from the Joint Committee on Administrative Rules (JCAR). Also, the hearing officer filed an e-mail exchange regarding an inquiry about the rulemaking as a public comment (PC 5).

PROPOSED AMENDMENTS

The PIMW rules are in Parts 1420, 1421, and 1422, within Subtitle M of the Illinois Administrative Code's Title 35 (35 Ill. Adm. Code 1420, 1421, 1422). These provisions address definitions, prohibitions, permitting, and minimum standards for treatment, packaging, storage, transportation, and disposal of potentially infectious medical waste.

This proceeding is limited to non-substantive revisions to the PIMW rules. The Board's amendments remove legalese, redundant and superfluous language, as well as reorganize some provisions for clarity. The amendments also change citations and regulatory language to make them consistent with the style requirements of the Illinois Administrative Code.

The Board's first notice proposal made no amendments to, and therefore did not include Sections 1421.110, 1421.120, 1421.130, 1421.Illustration A, 1422.110, 1422.120, and 1422.Table A and Table B. 35 Ill. Adm. Code 1421.110, 1421.120, 1421.130, 1421.Illustration A 1422.110, 1422.120, 1422.Table A, and 1422.Table B.

The Board's first notice proposal made three deletions. In Section 1420.102, the Board removed the last sentence in the definition of "reusable container" because it provides no additional clarity. The Board repealed Section 1421.101 (Compliance Date) and Section 1422.101 (Compliance Date) because they establish compliance dates that passed in 1993. And the Board deleted subsection (c) of Section 1422.123—subsection (c) exempts from subsection (b)'s Initial Efficacy Test requirements those treatment units operating before the PIMW rules took effect 25 years ago.

At second notice, the Board makes two notable changes from its first notice addendum to Section 1420.102, Definitions. First, the Board changes the citation to the Act in the definition of "Highly communicable disease" from "Section 3.60(a)(6)" to "Section 3.360(a)(6)." Second, the Board moves the definition of "PFU" between the definitions of "Person" and "Potentially infectious medical waste."

The Board also amends Section 1422.122(b)(4) to make it consistent with the rest of the Board's amendments. Specifically, the Board strikes the statutory language "*Commencing March 31, 1993, and annually thereafter, each*", and begins the subsection with "*Each*" because the original language is outdated and obsolete.

PUBLIC COMMENT

On March 1, 2018, JCAR filed its "1st Notice Version" of the rules, which contains JCAR's proposed changes to the rule text. None of JCAR's proposed changes are substantive. The Board incorporates these changes in its second notice proposal, except for a few.

Those not incorporated include JCAR's suggestion to add "*means those diseases identified as Class 4 etiological agents*" to the definition of "Highly communicable disease" because it is redundant. The Board agrees that the definition of "PFU" should be moved but disagrees with JCAR's proposed placement of the definition of "PFU"—as noted above, at second notice the Board inserts it after the definition of "Person" instead of after the definition of "Potentially infectious medical waste."

In Section 1420.103, the Board removes the superscript for "23rd". And in Section 1422.122(b)(4), JCAR suggests adding "shall file the report required by this subsection (b)(4)." to close the first sentence in the subsection. The Board adds "annually" after "shall".

CONCLUSION

The Board adopts the proposed amendments for second notice review. The amendments appear in the addendum to this order as strikethroughs for deletions, and underlines for additions.

ORDER

The Board directs the Clerk to submit these proposed amendments to JCAR for second notice review.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 20, 2019, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board