

ILLINOIS POLLUTION CONTROL BOARD  
August 22, 2019

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

Proposed Rule. Second Notice.

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

On March 22, 2018, the Board opened this docket to make non-substantive, clarifying amendments to its right-to-know (RTK) rules (35 Ill. Adm. Code 1600). After adopting a proposal for public comment, holding hearings, and receiving comments, the Board on May 30, 2019, adopted a first-notice proposal. Today the Board submits its proposal to the Joint Committee on Administrative Rules (JCAR) for second-notice review. *See* 5 ILCS 100/5-40(c) (2018).

The Board’s first-notice proposal incorporated non-substantive amendments proposed both by the Board and the Illinois Environmental Protection Agency (IEPA). The first-notice opinion includes a section-by-section discussion of the proposed amendments. Rather than reproduce it here, the Board directs individuals seeking that information to its first-notice opinion and order, which can be viewed on the Board’s website ([pcb.illinois.gov](http://pcb.illinois.gov)) under this docket number, R18-30. *See* Amendments to Subtitle O: Right to Know, R18-30 (May 30, 2019).

In this opinion, the Board begins with the procedural history since adopting its first-notice proposal. Next, the Board discusses any issues raised in the first-notice comments. The Board then addresses the technical feasibility and economic reasonableness of this second-notice proposal. Finally, the Board concludes to submit its proposal to JCAR for second-notice review. The proposed amendments appear in the addendum to this opinion and order.

**PROCEDURAL HISTORY SINCE FIRST-NOTICE PROPOSAL**

On May 30, 2019, the Board adopted a first-notice proposal. The proposed amendments were published in the *Illinois Register* on June 14, 2019. *See* 43 Ill. Reg. 6881. The proposal consisted of the Board’s opinion and order (Brd. Ord.) and an addendum (Add.) containing those amendments.

On July 29, 2019, IEPA filed comments on the Board’s first-notice proposal (IEPA 1st Not. Cmts.).

**SUMMARY OF SECOND-NOTICE PROPOSAL**

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). Generally, the RTK rules

address soil, soil gas, and groundwater contamination threatening potable water supply wells and the response action required in handling these threats. The rules include definitions; standards for performing potable water supply well surveys; and standards for performing community relations activities.

The Board proposes non-substantive amendments to remove redundant or unnecessary language, replace outdated language, update statutory references, and reorganize provisions for clarity. The Board's second-notice amendments remain largely unchanged from first notice. Specific changes are discussed below.

### **IEPA COMMENTS**

In its first-notice opinion and order, the Board reiterated its request that IEPA provide a redacted CRP to include in Appendix A to further aid authorized parties creating a CRP. Brd. Ord. at 6. IEPA did not address this request in its comments. The Board therefore proposes only minor amendments to Appendix A.

The Board asked IEPA to comment on three separate matters. Brd. Ord. at 7. First, the Board proposed amendments to Section 1600.210(c)(1), (c)(2)(B), and (e) that generally reorganized and clarified those provisions. The Board asked IEPA to comment on whether IEPA considered the amendments to be substantive and why. *Id.*; Add. at 7-8. IEPA comments that the amendments appear to be non-substantive, and the Board submits them as proposed to second-notice review. IEPA 1st Not. Cmts. at 1.

Second, the Board asked IEPA to comment on expanding the "Applicability" section, Section 1600.305, to include an explanation distinguishing the notice requirements for limited and expanded community relations activities. Brd. Ord. at 7. Although similar, Sections 1600.310 and 1600.315 require different notice requirements for limited activities and expanded activities. IEPA suggests inserting a new subsection (c) to address this. IEPA 1st Not. Cmts. at 1.

- c) Limited community relations activities apply when five or fewer offsite properties or potable supply wells, other than a community water supply well, are impacted by the release. Expanded community relations activities apply when one or more public water supply wells or more than five offsite properties or potable supply wells, other than a community water supply well, are impacted by the release.
  - 1) Limited community relations activities include developing a notice, contact list, and fact sheet. Refer to Section 1600.310 for more specific information.
  - 2) Expanded community relations activities include developing a notice, CRP, and fact sheet as well as establishing a document repository. Refer to Section 1600.315 for more specific information. IEPA 1st Not. Cmts. at 1-2.

The Board amends Section 1600.305(c) accordingly.

Third, the Board asked IEPA whether any proposed amendments change the rules' meaning or application to which IEPA indicates "no." Brd. Ord. at 7; IEPA 1st Not. Cmts. at 2.

Finally, Sections 1600.310(b)(3) and 1600.315(b)(3) requires specified information in a fact sheet for the release and response action. IEPA comments that the proposed subsections 1600.310(b)(3)(J) and 1600.315(b)(3)(K) should also include "its website as an additional avenue for information gathering." IEPA 1st Not. Cmts. at 2. IEPA suggests inserting the following into both proposed subsections:

An explanation of how additional information and site-related documentation can be obtained, including how to access the information by using the Agency's website, contact a statement that additional information and site-related documents may be available by contacting the Agency's designated staff person or file a request with the Agency under by filing a request for site-specific information with the Agency in accordance with the Freedom of Information Act [5 ILCS 140].

The Board amends Sections 1600.310(b)(3)(J) and 1600.315(b)(3)(K) as suggested by IEPA.

### **TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS**

In its first-notice opinion, the Board found its proposal to be technically feasible and economically reasonable. IEPA's comments do not address technical feasibility and economic reasonableness.

The Board intends to propose only non-substantive amendments that clarify the language of existing rules. Because the record does not dispute the conclusion reached in its first-notice opinion and because the amendments are non-substantive, the Board finds that the proposal is both technically feasible and economically reasonable. *See* 415 ILCS 5/27(a) (2018). The Board further finds that these proposed amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b) (2018).

### **CONCLUSION**

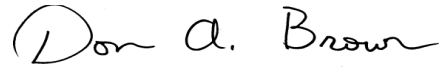
The Board proposes these amendments to its right-to-know rules for second-notice review. The proposed amendments appear in the addendum to this opinion and order. Revisions first proposed at second notice are double underlined or double struck through.

### **ORDER**

The Board directs the Clerk to submit its proposal 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 order on August 22, 2019, 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, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board