

ILLINOIS POLLUTION CONTROL BOARD

August 22, 2019

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

Adopted Rule. Final Order.

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

Today the Board adopts amendments to its potentially infectious medical waste (PIMW) rules at 35 Ill. Adm. Code 1420, 1421, and 1422. The adopted amendments streamline, update, and clarify the PIMW regulations.

In this order, the Board first provides the background and procedural history of this docket. The Board then briefly addresses changes requested during second notice review by the Joint Committee on Administrative Rules (JCAR). The Board then reaches its conclusion and issues its order. The adopted amendments, which take effect upon filing with the Secretary of State (*see* 415 ILCS 5-40(b) (2018)) appear as an addendum to this order.

**BACKGROUND**

In 2016, the Board began reviewing its rules to identify obsolete, repetitive, unclear, or otherwise unnecessary language. On October 17, 2016, the Governor issued Executive Order 16-13. The order directed State agencies to review their regulations; identify those that are outdated, repetitive, confusing, unnecessary, or harmful to Illinois’ economy; and amend or repeal those regulations as necessary.

On January 10, 2018, the Illinois Environmental Protection Agency (IEPA) filed a rulemaking proposal responding to Executive Order 16-13. IEPA proposed to amend numerous Board rules. Clean-Up Amendments to 35 Ill. Adm. Code Parts 201, 211, 212, 214, 215, 216, 217, 218, 219, 225, 228, 232, 237, 301, 302, 303, 304, 306, 309, 401, 402, 403, 404, 405, 501, 611, 615, 616, 617, 722, 811, 813, 855, and 1000, R18-21, slip op. at 2, 24-26 (Jan. 10, 2018). While IEPA’s proposal did not include amendments to Parts 1420, 1421, or 1422, the Board opened this docket to review and amend its PIMW rules.

**PROCEDURAL HISTORY**

On May 10, 2018, the Board proposed amendments for public comment without submitting them to first-notice publication. Also on May 10, 2018, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) conduct a study of the economic impact of the Board’s proposal. *See* 415 ILCS 5/27(b) (2018). The Board received no response to its request.

The Board held public hearings on September 11, 2018, and October 17, 2018. The Board received written comments from Stericycle, Inc. (Stericycle) (PC 1), the Illinois Environmental Protection Agency (IEPA) (PC 2), and the Illinois Health and Hospital Association (IHA) (PC 4). The Board docketed as PC 3 an email exchange between the court reporter and the Board.

On February 14, 2019, the Board adopted a first-notice proposal, which was published in the Illinois Register on March 1, 2019 (43 Ill. Reg. 2966, 2983, 2994). During the first-notice comment period, the Board docketed as PC 5 an e-mail exchange between the Board and Blachford, Inc.

On June 20, 2019, the Board adopted a proposal for second-notice review by JCAR. At its meeting on August 13, 2019, JCAR issued its certificate of no objection to the proposed amendments, subject to a limited number of non-substantive changes included in the adopted rules.

### **SECOND NOTICE AMENDMENTS**

The Board described the proposed amendments in detail in its first-notice opinion. *See Amendments to 35 Ill. Adm. Code Subtitle M: Biological Materials*, R18-29, slip op. at 2-6 (Feb. 14, 2019). In its second-notice proposal, the Board adopted a limited number of revisions, corrections, and clarification. *See Amendments to 35 Ill. Adm. Code Subtitle M: Biological Materials*, R18-29, slip op. 2-3 (Jun. 20, 2019).

During its second-notice review, JCAR requested clarifications and reorganizations. Those changes are reflected in the addendum to this order. Because of the limited number and non-substantive nature of those changes, they are not specifically addressed in this opinion.

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

As noted above, the Board requested that DCEO conduct an economic impact study of the Board's proposed rules, but the Board received no response.

Since opening this docket, the Board has intended that its proposal would be non-substantive in nature and would not affect the technical feasibility and economic reasonableness of its rules. The record does not include testimony or comment arguing that the Board has strayed from this intent. The Board finds that its adopted amendments are economically reasonable and technically feasible. The Board also concludes that the adopted amendments will not have an adverse impact on the citizens of Illinois.

### **CONCLUSION**

The Board adopts amendments to Parts 1420, 1421, and 1422 of its PIMW rules. The amended rules include changes suggested by JCAR during its second-notice review. The Board has reviewed the record in this proceeding and finds that the adopted rules are technically feasible and economically reasonable and that they will not have an adverse impact on the

citizens of Illinois. The adopted rules appear in the addendum to this order. Proposed additions appear underlined, and proposed deletions appear struck through.

**ORDER**

The Board directs the Clerk to submit the adopted amendments in the addendum to this opinion to the Secretary of State for publication in the *Illinois Register*.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2018); *see also* 35 Ill. Adm. Code 101.300(d), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 22, 2019, by a vote of 5-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board