

ILLINOIS POLLUTION CONTROL BOARD  
September 19, 2019

IN THE MATTER OF: )  
)  
AMENDMENTS TO 35 ILL. ADM. CODE ) R18-24  
SUBTITLE D: MINE RELATED WATER ) (Rulemaking - Water)  
POLLUTION )

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by C.M. Santos and B.K. Carter):

Today the Board adopts amendments to its mine-related water pollution rules at 35 Ill. Adm. Code 401, 402, 403, 404, 405, and 406. The adopted amendments streamline, update, and clarify these rules.

In this opinion, the Board begins with the background and procedural history of this rulemaking. Next, the Board addresses the second-notice review by the Joint Committee on Administrative Rules (JCAR). The Board then addresses the technical feasibility and economic reasonableness of the adopted rules. Finally, the Board reaches its conclusion and issues its order. The adopted amendments, which take effect upon filing with the Secretary of State (*see* 5 ILCS 5-40(d) (2018)), appear in the addendum to this opinion and 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 The order directed State agencies to review their regulations; identify those that are outdated, repetitive, confusing, unnecessary, or harmful to Illinois' economy; and amend or repeal those regulations as necessary.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, including those in Subtitle D. 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).

**PROCEDURAL HISTORY**

On July 26, 2018, the Board proposed amendments for public comment without submitting them to first-notice publication. The proposal included amendments proposed by IEPA in R18-21 and amendments proposed by the Board.

On October 24, 2018, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) perform an economic impact study of the Board's proposal. *See* 415 ILCS 5/27(b) (2018). The Board did not receive a response to its request.

Hearings were conducted by videoconference between the Board's Chicago and Springfield offices on December 6, 2018, and December 20, 2018. The Board received comments from IEPA before the first hearing (PC 1) and after the second hearing (PC 2).

On March 28, 2019, the Board adopted a first-notice proposal. The proposed amendments were published in the *Illinois Register* on April 26, 2019. *See* 43 Ill. Reg. 4730, 4737, 4749, 4756, 4766, 4781. During the first-notice comment period, IEPA filed comments (PC 3).

On May 14, 2019, at JCAR's request, DCEO filed a Small Business Impact Analysis on the proposal (DCEO Analysis).

On July 25, 2019, the Board adopted a proposal for second-notice review by JCAR. At its September 17, 2019 meeting, JCAR issued its certificate of no objection to the proposed amendments, subject to a limited number of non-substantive changes.

### **SECOND-NOTICE AMENDMENTS**

The Board's first-notice proposal incorporated non-substantive amendments proposed both by the Board and IEPA. A section-by-section discussion of those amendments can be found in the Board's first-notice opinion and order. *See* Amendments to 35 Ill. Adm. Code Subtitle D: Mine Related Water Pollution, R18-24, slip op. at 2-12 (March 28, 2019). In its second-notice proposal, the Board adopted a limited number of revisions. *See* Amendments to 35 Ill. Adm. Code Subtitle D: Mine Related Water Pollution, R18-24, slip op. at 2-3 (July 25, 2019).

During second-notice review, JCAR requested a small number of clarifications which are reflected in the addendum to this order. Due to the limited number and non-substantive nature of those changes, the Board does not specifically address those changes in today's opinion.

### **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 or economic reasonableness. In its Small Business Impact Analysis, DCEO suggests that the rule amendments will not generate costs. DCEO concludes that the amendments do "not require any new professional skills, filing, reporting or bookkeeping requirements for small business." DCEO Analysis at 1.

Since opening this docket, the Board has intended its proposal to include only non-substantive amendments that clarify and update 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 adopts amendments to Parts 401, 402, 403, 404, 405, and 406 of its mine-related water pollution 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 opinion and order. Additions appear underlined and deletions appear struck through.

### **ORDER**

The Board directs the Clerk to submit the adopted amendments 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 order on September 19, 2019, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board