

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2019

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

Adopted Rule. Final Order.

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

Today the Board adopts amendments to its right-to-know (RTK) rules at 35 Ill. Adm. Code 1600. 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 changes requested during 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 the summer of 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 The order directed State agencies to review their regulations; identify those that are outdated, repetitive, confusing, unnecessary, or harmful to Illinois' economy; and amend or repeal those regulations as necessary.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. Although IEPA proposed to amend numerous Board rules, its proposal did not include amendments to the Board's RTK 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). The Board, on its own motion, opened this docket to consider non-substantive amendments to these rules. *See* Amendments to 35 Ill. Adm. Code Subtitle O: Right to Know, R18-30 (Mar. 22, 2018).

PROCEDURAL HISTORY

On June 21, 2018, the Board proposed amendments for public comment without submitting them to first-notice publication. The Board received written comments on its proposal from IEPA (PC 1).

On October 24, 2018, the Board requested that the Department of Commerce and Economic Opportunity 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 on the Board's proposal were conducted by videoconference between the Board's Chicago and Springfield offices on December 6, 2018, and December 19, 2018. The Board again received written comments from IEPA after the second hearing (PC 2).

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. During the first-notice comment period, IEPA filed comments (PC 3).

On August 22, 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 included in the adopted rules.

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 O: Right to Know, R18-30, slip op. at 2-7 (May 30, 2019). In its second-notice proposal, the Board adopted a limited number of revisions. *See* *Id.*, slip op. at 2-3 (Aug. 22, 2019).

During second-notice review, JCAR requested a small number of clarifications which are reflected in the addendum to this order. The changes were limited in number and non-substantive in nature. Except for minor changes made in two identical sections, the Board does not specifically address the other changes in today's opinion.

Sections 1600.310(b)(3) and 1600.315(b)(3) provide a list of specified information that must be included in a fact sheet for the release and response action. Specifically, subsection (b)(3)(J) of Section 1600.310 and subsection (b)(3)(K) of Section 1600.315 each include a requirement that the fact sheet provide three specified ways to obtain additional site-related information. To ensure none of the three requirements are overlooked in either subsection, the Board adds subsections (i)-(iii) listing those requirements.

TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

In its first-notice opinion, the Board found its proposal to be technically feasible and economically reasonable. None of IEPA's public comments addressed technical feasibility or economic reasonableness.

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 Part 1600 of its RTK 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