

ILLINOIS POLLUTION CONTROL BOARD  
May 4, 2023

IN THE MATTER OF: )  
)  
AMENDMENTS TO 35 ILL. ADM. CODE ) R 18-26  
SUBTITLE F: PUBLIC WATER SUPPLY ) (Rulemaking – Public Water Supply)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by B.F. Currie):

The Board opened this docket to review its public water supply rules; determine which of them may be obsolete, repetitive, confusing, or unnecessary; and propose non-substantive clarifications. Today, the Board adopts amendments intended to update and clarify those rules.

In this opinion and order, the Board first provides background on the objectives of this rulemaking and its procedural history. Next, the Board addresses second-notice review by the Joint Committee on Administrative Rules (JCAR). The Board then discusses issues of technical feasibility and economic reasonableness. Finally, the Board concludes to adopt amended rules and issues its order. The adopted amendments, which take effect upon filing them with the Secretary of State (*see* 5 ILCS 5-40(d) (2020)), follow this opinion.

**BACKGROUND**

In 2016, the Board began reviewing its rules to identify obsolete, unclear, or otherwise unnecessary language. In 2018, the Illinois Environmental Protection Agency (IEPA) filed a proposal to amend numerous Board rules, including Parts 611, 615, 616, and 617 of the Board’s public water supply regulations. 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 (Jan. 10, 2018). IEPA’s proposal cited Executive Order 2016-13, which required agencies to review existing regulations to identify provisions that are outdated, repetitive, confusing, or unnecessary and then revise or repeal them as appropriate.

The Board opened this rulemaking docket specifically to consider amendments to its Subtitle F public water supply regulations. 35 Ill. Adm. Code 601, 602, 603, 604, 611, 615, 616, 617, and 618. Amendment to 35 Ill. Adm. Code Subtitle F: Public Water Supply, R18-26 (Feb. 8, 2018). The Board’s proposal included both amendments originally proposed by IEPA in R18-21, and those identified by the Board during its own review of Subtitle F. Both IEPA and the Board intend the proposed amendments to be non-substantive in nature.

**ABBREVIATED PROCEDURAL HISTORY**

On January 10, 2018, IEPA filed a proposal to make non-substantive revisions to Board rules including provisions of Subtitle F. On February 8, 2018, the Board opened this rulemaking

docket to address public water supply regulations in Subtitle F of its rules. On June 17, 2021, the Board adopted a proposal for public comment (Board Prop.). The proposal included both amendments originally proposed by IEPA and amendments proposed by the Board. In its order, the Board requested comment generally and directed seven questions to IEPA on specific matters.

In a letter dated September 17, 2021, the Board requested that the Department of Commerce and Economic Opportunity (DCEO) perform an economic impact study of the Board's proposal and respond to the request by November 1, 2021. See 415 ILCS 5/27(b) (2020). In a letter dated October 22, 2021, (DCEO Letter) DCEO declined the Board's request, saying "[t]he proposed rule changes are administrative in nature, with no meaningful economic impact." DCEO Letter at 1. On November 16, 2021, IEPA filed responses to the Board's questions and requests for comments (PC 1). The first hearing was held in Chicago on October 12, 2021, and the Board received the transcript (Tr. 1) on October 18, 2021. On December 28, 2021, IEPA filed an updated response to the Board's question number 7. (IEPA Resp.) The second hearing took place in Springfield on January 6, 2022, and the Board received the transcript (Tr. 2) on January 14, 2022. On January 28, 2022, IEPA filed post-hearing comments (PC 2).

On May 12, 2022, the Board adopted a first-notice opinion and order (First Notice). Proposed amendments to Parts 601, 602, 603, 604, 611, 615, 616, 617, 618 appeared in the *Illinois Register* on May 27, 2022. 46 Ill. Reg. 8604, 8628, 8699, 8676, 8724, 8748, 8794, 8840, 8864 (May 27, 2022). On June 27, 2022, the Board docketed as public comment an email between the staff of JCAR and the Board (PC 3) regarding changes suggested by JCAR to Parts 601, 602, 603, 604, 611, 615, 616, 617, and 618.

On July 8, 2022, IEPA filed its first-notice comments (PC 4). On July 11, 2022, the Board docketed as public comment an email between the staff of JCAR and the Board (PC 5) regarding changes suggested by JCAR to Part 611. On February 27, 2023, the Board filed as public comments its Part-by-Part responses to JCAR's suggested changes. The Board filed its response for Part 601 as PC 7; Part 602 as PC 8; Part 603 as PC 9; Part 604 as PC 10; Part 611 as PC 11; Part 615 as PC 12; Part 616 as PC 13; Part 617 as PC 14; and Part 618 as PC 15.

On March 2, 2023, the Board adopted a second-notice proposal for review by JCAR. At its meeting on April 18, 2023, JCAR issued its Certificates of No Objection to the proposed amendments, subject to a limited number of non-substantive changes. JCAR Cert. Additionally, JCAR issued a recommendation as to Sections 602.111 and 602.116. JCAR Rec. The Board's response to the recommendation is below.

### **SECOND-NOTICE AMENDMENTS**

The Board's first-notice proposal included non-substantive amendments originally proposed both by the Board and IEPA. The first-notice opinion includes a Part-by-Part discussion of the proposed amendments. The Board does not in this order repeat that entire opinion, which can be viewed on the Board's website ([pcb.illinois.gov](http://pcb.illinois.gov)) under this docket number

R18-26. *See* Amendments to 35 Ill. Adm. Code Subtitle F: Public Water Supply, R18-26 (May 12, 2022).

In its second-notice opinion, the Board proposed a number of additional non-substantive changes, many of which JCAR suggested. Amendments to 35 Ill. Adm. Code Subtitle F: Public Water Supply, R18-26 (March 2, 2023); *see* PCs 7-15. The Board also does not repeat that entire opinion today, and it also can be viewed from the Board’s website.

During second-notice review, JCAR suggested a smaller number of additional changes, which are reflected in the adopted rules. Due to the limited number and non-substantive nature of those changes, the Board does not specifically address those changes in today’s opinion.

### **JCAR Actions**

At its April 18, 2023 meeting, JCAR issued Certificates of No Objection for the Subtitle F amendments. JCAR recommended that the Board, “in its next substantive rulemaking on this Part amend Sections 602.111 and 602.116 to include the standards by which the Environmental Protection Agency will exercise the specific discretionary powers delegated to it by those Sections.” JCAR Rec. at 2. The recommendation added, “Sec. 5-20 of the IAPA requires each rule that implements a discretionary power exercised by an agency to include the standards by which the agency will exercise the power.” *Id.*

The subject of JCAR’s recommendation is beyond the scope of this non-substantive rulemaking. The Board accepts JCAR’s recommendation regarding Sections 602.111 and 602.116. In its next substantive rulemaking on Part 602, the Board will consider the subject of JCAR’s recommendation.

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

As noted above under “Procedural History,” the Board on September 17, 2021, requested that DCEO perform an economic impact study of the Board’s proposal. *See* 415 ILCS 5/27(b) (2020). In a letter dated October 22, 2021, DCEO responded that it had “conducted a preliminary review of the proposed rule changes and an initial economic analysis. The proposed rule changes are administrative in nature, with no meaningful economic impact on businesses or workers based on our initial review.” DCEO respectfully declined the Board’s request to perform a study. No participant at either hearing testified or commented on the Board’s request or DCEO’s response. Tr.1 at 4; Tr.2 at 12-13.

When it adopted its first-notice proposal, the Board considered the record, particularly IEPA’s comments on the Board’s proposal for public comment and IEPA’s post-hearing comments. Based on the record then before it, the Board concluded that the first-notice proposal did not make substantive revisions that affect complying with existing rules. The Board found that its first-notice proposal was both technically feasible and economically reasonable. *See* 415 ILCS 5/27(a) (2020). The Board further found that its proposed non-substantive amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(b) (2020).

In its second-notice opinion, the Board said that no addition to the record altered those conclusions. The Board again concluded that its proposal was both technically feasible and economically reasonable and that its proposed non-substantive amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(a), (b) (2020).

The Board again finds that no addition to the record alters those conclusions. Based on its review of the record now before it, the Board concludes that its proposed non-substantive amendments are both technically feasible and economically reasonable. The Board also again finds that these amendments would not have any adverse economic impact on the people of the State of Illinois. *See* 415 ILCS 5/27(a), (b) (2020).

### **CONCLUSION**

The Board concludes to adopt non-substantive amendments to Parts 601, 602, 603, 604, 611, 615, 616, 617, 618 of its public water supply rules. These amended rules include a limited number of 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 with additions appearing underlined and deletions appearing 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) (2020); *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 May 4, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board